

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 11 April 2014

Case No.: 2014-STA-00028

In the Matter of

ANDREW MORRISON
Complainant

v.

LP FLEMING JR TRUCKING COMPANY, INC.
Respondent

ORDER OF DISMISSAL

The whistleblower provision of the Surface Transportation Assistance Act ("STAA") was enacted in 1982 and codified at 49 U.S.C. app. § 2305. In 1994, the STAA was recodified at 49 U.S.C. § 31105. The STAA was amended the Implementing Recommendations of the 9/11 Commission Act 2007, P.L. No. 110-053 (Aug. 3, 2007).

In a letter dated December 31, 2013 the Occupational Safety and Health Administration (OSHA) notified Complainant that OSHA made the following determinations:

Respondent is a person within the meaning of 1 USC § 1 and 49 USC § 31105. It is also a commercial motor carrier within the meaning of 49 USC § 31101. Respondent is engaged in transporting mail on the highways via a commercial motor vehicle with a gross vehicle weight rating of 10,001 pounds or more. Respondent maintains places of business in Long Island, New York, and in Landover, Maryland.

Respondent hired Complainant as a driver. Complainant drove Respondent's vehicles over highways in commerce to transport mail and deliver packages. In the course of employment, Complainant directly affected commercial motor vehicle safety.

Complainant was discharged on or about August 30, 2013. On September 12, 2013, he filed a complaint with the Occupational Safety and Health Administration alleging that Respondent

discriminated against him in violation of 49 USC §311 05. This complaint was filed within 180 days and is therefore timely filed.

Following the filing of this complaint, the complainant declined to continue to cooperate in the conduct of the investigation. The complaint is therefore dismissed as the merits of the complaint could not be established.

OSHA's letter further informed the parties of their right to a hearing.

Following OSHA's determination, on January 20, 2014 Complainant requested a hearing a formal hearing. I hereby find that Complainant's request for hearing was timely filed.

On February 6, 2014, this matter was assigned to me for adjudication. Accordingly, on February 18, 2014, a notice was issued in this matter scheduling the hearing for April 21, 2014 in New York, New York.¹

In addition, said Notice scheduled the following:

1. Complainant was to provide this office within seven (7) days a complete copy of any written complaint which he submitted to OSHA on or about September 12, 2013.
2. March 14, 2014 as the deadline for the filing of pre-hearing statements.
3. An initial pre-hearing conference call for March 18, 2014 at 4:00 p.m.²

Both parties failed to conform to the pre-hearing requirements, and did not appear for the pre-hearing conference call. Accordingly, on March 21, 2014 an Order was issued in which Complainant was ordered to show cause, no later than April 7, 2014, why his claim should not be dismissed due to abandonment of his claim. Complainant was advised that if no response was received in the timeframe proscribed, the hearing would be cancelled and this claim would be dismissed with prejudice.

¹ This office is in possession of Domestic Return Receipts acknowledging receipt of the Notice by both parties.

² The parties were to provide this office, no later than noon, two business days prior to the scheduled call the names of the persons attending the conference call.

To date, and time for such filing now expired, no response has been received from Complainant. Accordingly, I hereby **ORDER** the hearing in this matter **CANCELLED**. It is further **ORDERED** that, in accordance with 29 C.F.R. § 18.39(b)(2008), this claim is **DISMISSED** with prejudice. See also Sparks v. Rich Wilson Blacktop, ARB No. 09-095, Administrative Law Judge No. 2009-STA-21 (ARB June 30, 2009)

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) with the Administrative Review Board (“Board”) within fourteen (14) days of the date of issuance of the administrative law judge’s decision. The Board’s address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARBCorrespondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1978.109(e) and 1978.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1978.110(b).