

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 06 March 2014

CASE NO.: 2014-STA-31

IN THE MATTER OF

GILBERT LAVON SWAGGER, JR.

Complainant

v.

LUFKIN INDEPENDENT SCHOOL DISTRICT (LISD)

Respondent

**ORDER APPROVING WITHDRAWAL OF OBJECTIONS
AND DISMISSAL OF CLAIM**

This proceeding arises under the Surface Transportation Assistance Act of 1982 ("STAA"), 49 U.S.C. §31105, and the regulations promulgated thereunder at 29 C.F.R. Part 1978.

On January 21, 2014, Complainant filed a timely complaint with the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) alleging his former employer, Lufkin Independent School District (LISD), violated the STAA's employee protection provisions when it terminated his employment on January 10, 2014. After conducting an investigation, the OSHA's Regional Supervisory Investigator issued a final determination letter on January 29, 2014. Concluding the evidence showed Complainant was terminated due to misconduct and not engagement in protected activity, OSHA dismissed the complaint, finding no reasonable cause to believe Respondent violated the STAA. By letter dated February 10, 2014, and received in this office on February 18, 2014, Complainant timely filed objections to the *Secretary's Findings and Order* dismissing the claim.

On February 24, 2014, Complainant filed a letter stating that he is "withdrawing my objection" and need for a hearing against Respondent.

The rules governing withdrawal of STAA complaints provide that "at any time before the ...findings and preliminary order become final, a party may withdraw its objections to the findings and/or preliminary order by filing a written withdrawal with the administrative law judge," who shall then determine whether to affirm any portion of the findings or preliminary order or approve the withdrawal. 29 C.F.R. §1973.111(c).

No final decision has been issued in this matter. As such, upon review of the entire record, and for good cause shown, Complainant's request to withdraw is hereby **GRANTED**. Accordingly,

ORDER

IT IS HEREBY ORDERED, consistent with the regulations, the Secretary's findings are affirmed in their entirety and the above captioned matter is hereby **DISMISSED** with prejudice without costs awarded to either party.

ORDERED this 6th day of March, 2014, at Covington, Louisiana.

LEE J. ROMERO, JR.
Administrative Law Judge

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: ARB-Correspondence@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).