



Issue Date: 03 February 2015

In the Matter of:

OSCAR BROWN,
Complainant,

Case No.: 2015-STA-00017

v.

SMART LOGISTICS, LLC,
Respondent.

ORDER DISMISSING COMPLAINT AS UNTIMELY

This complaint arises under the employee protection provisions of the Surface Transportation Assistance Act (“The Act” or “STAA”), 49 U.S.C. § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53. The Secretary of Labor, acting through the Occupational Safety and Health Administration (OSHA), issued a preliminary order dismissing Complainant’s case on September 26, 2014. On November 18, 2014, the Office of Administrative Law Judges (OALJ) received Complainant’s appeal of the Secretary’s findings. Pursuant to my December 3, 2014, *Notice of Hearing and Prehearing Order*, this case was scheduled for formal hearing on March 24-26, 2015, in St. Louis, MO.

On December 30, 2014, I received *Respondent Smart Logistics, LLC’s Motion to Dismiss Complainant Oscar Brown’s Complaint*. Respondent argued that Complainant should be barred from bringing his claim because he failed to object to the Secretary’s preliminary order within 35 days of the date of the decision, which is the prescribed timeframe for submitting objections. Respondent stated that the Secretary’s findings have become final and are no longer subject to judicial review. Complainant has not responded to Respondent’s *Motion to Dismiss*.

The STAA states that a party must file its objections to the Secretary’s findings and/or a request for hearing no later than 30 days from the date of receipt of the decision. 49 U.S.C. §31105(b)(2)(B); 29 C.F.R. Part 1978.106(a). Further, “if a hearing is not requested within the 30 days, the preliminary order is final and not subject to judicial review.” 29 C.F.R. Part 1978.105(c). When notice of a decision is served upon a party by mail, five additional days are added to this 30-day timeframe. 29 C.F.R. § 18.4(c)(3).

Given that the Secretary’s findings were issued on September 26, 2014, Complainant’s objections and request for hearing were filed well outside the prescribed timeframe for filing.

Even allowing five additional days for Complainant to receive the Secretary's findings via certified mail, Complainant's objections, received on November 18, 2014, were received almost two weeks late. Thus, the Secretary's findings have become final and are not subject to my review.

IT IS HEREBY ORDERED that this case is dismissed as untimely. Accordingly, the hearing scheduled for March 24-26, 2015, in St. Louis, MO, is hereby **CANCELED**.

IT IS SO ORDERED.

CHRISTINE L. KIRBY
Administrative Law Judge