



Issue Date: 13 January 2015

Case Number: 2015-STA-00012

In the Matter of:

KELLEY D. RANDOLPH
Complainant

v.

MONUMENT TRANSPORTATION
Respondent

ORDER OF DISMISSAL

This case arises under the employee protection provisions of 49 U.S.C. § 31105 of the Surface Transportation Assistance Act of 1982 (“STAA”) and the regulations of the Secretary of Labor published at 29 C.F.R. Part 1978. This matter is not currently set for hearing.

On December 8, 2014, I issued an *Order to Show Cause Why the Matter Should Not Be Dismissed* (“OSC”) based upon what appeared to be a lack of written objections to the Secretary’s Findings or request for a formal hearing. I gave Kelley D. Randolph (“Complainant”) 21 days to respond to the OSC. Complainant did not file a response and has not otherwise contacted this office. Therefore, as explained below, this matter is dismissed and the case closed.

Background

On October 23, 2014, the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”) denied a whistleblower complaint filed online by Complainant on September 24, 2014. Complainant alleged that he was terminated from employment by Monumental Transportation (“Respondent”) on September 23, 2014 in violation of the STAA.¹ OSHA denied the complaint due to Complainant’s failure to cooperate with the investigation.²

¹ In his original complaint, Complainant alleged Respondent forced him to work in excess of the service limitations imposed by the Department of Transportation and encouraged employees to misreport actual hours worked. Complainant also averred that Respondent threatened employees with termination, if they failed to cooperate.

² It appears OSHA was unsuccessful in several attempts to contact Complainant. Accordingly, OSHA mailed Complainant a letter via certified mail requesting a response no later than October 16, 2014. As Complainant failed to respond, OSHA presumed he was no longer interested in pursuing the complaint and dismissed it.

OSHA sent Complainant a denial letter by United States Postal Service (“USPS”) certified mail, which USPS tracking information indicates was delivered to Complainant at his Clifton, Colorado address on October 25, 2014. The denial also advised the parties that they had 30 days from receipt of the findings to file written objections with the Office of Administrative Law Judges (“Office”) at the address above and to request a hearing before an Administrative Law Judge. OSHA also sent a courtesy copy of the denial letter to this office, which was received on October 28, 2014 and assigned the case number above. However, to date, Complainant has not filed written objections to the Secretary’s Findings with this Office or requested a formal hearing.

Consequently, on December 8, 2014, I issued an OSC directing Complainant to submit written evidence, within 21 days of the Order, showing that he timely filed a notice of appeal in this matter. I directed Complainant to specifically address when he received the notice of the OSHA denial, and, if there was an appeal, proof of when and where such appeal was filed. I noted that, if Complainant required additional time to comply with the OSC, he could request an extension in writing. Finally, I advised Complainant that if he did not submit a sufficient answer, then this matter would be dismissed without a trial. As of the date of this Order, Complainant has not contacted this Office, or otherwise responded to the OSC.³

Discussion and Legal Conclusion

When OSHA denies a whistleblower complaint,

“any party who desires review, including judicial review, must file any objections and a request for a hearing on the record within 30 days of receipt of the findings and preliminary order . . . The objections and request for a hearing must be in writing . . . The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of filing; . . . Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, and copies of the objections must be mailed at the same time to the other parties of record and the OSHA official who issued the findings.”

29 C.F.R. § 1978.106(a).

“If a hearing is not requested within the 30 days, the preliminary order is final and not subject to judicial review.” 49 U.S.C. § 31105(b)(2)(B); *see also* 29 C.F.R. § 1978.106(b) (“If no timely objection is filed with respect to either the findings or the preliminary order, the findings and/or the preliminary order will become the final decision of the Secretary, not subject to judicial review.”).

The information in the record establishes that Complainant has not filed an appeal within 30 days of receipt of OSHA’s dismissal of his complaint, as required by the statute and

³ The OSC was sent via United States Postal Service registered mail and tracked as received on December 11, 2014.

regulation. Accordingly, because the evidence establishes that Complainant has not filed a timely notice of appeal, his complaint is dismissed. All dates are vacated. The matter is closed.

SO ORDERED:

STEPHEN R. HENLEY
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).