



**Issue Date: 29 October 2018**

Case No.: 2018-STA-00059

***In the Matter of:***

GERALD JOY,  
*Complainant,*

v.

SAM LEHMILLER TRUCKING,  
*Respondent.*

**DECISION AND ORDER DISMISSING CASE**

The above-captioned case arises under the whistleblower protection provisions of the Surface Transportation Assistance Act of 1982 (“STAA” or the “Act”), 49 U.S.C. § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, and the corresponding regulations found at 29 C.F.R. Part 1978.

On December 3, 2015, Gerald Joy (“Complainant”) filed a complaint with the U.S. Department of Labor, Occupational Health and Safety Administration (“OSHA”), alleging that his former employer, Sam LehMiller Trucking (“Respondent”), violated the STAA by terminating his employment on November 20, 2015 in retaliation for refusing to drive over his allowable hours of service. After conducting an investigation, the Secretary of Labor, acting through the OSHA Regional Administrator, issued a final determination on March 28, 2018 (“Secretary’s Findings”), finding no reasonable cause to believe Respondent violated the STAA, and dismissed the complaint. The Secretary’s Findings were served on Complainant by certified mail<sup>1</sup> and advised him that he had 30 days from receipt to file objections and request a hearing before the Office of Administrative Law Judges (“Office”).<sup>2</sup> The Complainant was

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<sup>1</sup> “The findings . . . will be sent by certified mail, return receipt requested, to all parties of record (and each party’s legal counsel if the party is represented by counsel).” 29 C.F.R. § 1978.105(b).

<sup>2</sup> Any party who desires review must file objections and a request for hearing within 30 days of receipt of the findings 29 C.F.R. § 1978.106(a). If no timely objection is filed, the findings become the final decision of the Secretary, not subject to judicial review. 29 C.F.R. § 1978.106(b).

further advised that, if no objections were filed, “these Findings will become final and not subject to court review.”

On May 14, 2018, forty days after receipt of the Secretary’s Findings, Complainant sent a facsimile to this Office requesting an extension of time to file objections and request for hearing.<sup>3</sup> On May 18, 2018, I issued an *Order Granting Request to Extend Time to File Objections to Secretary’s Findings and Request for Hearing* (“Order”), granting Complainant until June 13, 2018 to submit a request for hearing.<sup>4</sup> On October 9, 2018, having received no such request from Complainant, I issued an *Order to Show Cause* (“Order”) instructing the parties to show cause within 14 days why this matter should or should not be dismissed.

On October 23, 2018, Respondent filed a *Motion to Dismiss Complainant Gerald Joy’s Complaint and Motion to Deny Any Additional Requests to Extend Complainant Gerald Joy’s Time to File Objections or Request Hearings* (“Motion”). Respondent submits that as the Secretary’s findings dismissing the complaint were issued on March 28, 2018, and Complainant has yet to file an objection or request a hearing, the Secretary’s findings should be considered final and not subject to further review. Complainant has not filed a response to the Order.

#### Discussion

Complainant received the Secretary’s Findings dismissing his complaint on April 4, 2018. Complainant was advised that he had 30 days from receipt to file objections and a request for hearing with this Office, or OSHA’s decision dismissing the complaint would become final and not subject to further review. Complainant did not file objections or a request for hearing within the 30 day window. Instead, forty days later, on May 14, 2018, he asked for additional time to decide. On May 18, 2018, I granted Complainant’s request, giving him until June 13, 2018. However, that date has come and gone and Complainant has not requested a hearing. This Office has not received a response from Complainant to the Order to Show Cause and Complainant has not communicated with this Office in any way since June 13, 2018.<sup>5</sup>

With no objection or request for hearing having been timely filed, and no evidence in the record justifying equitable tolling, OSHA’s finding that it “does not have reasonable cause to

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<sup>3</sup> OSHA served Complainant a copy of the findings by certified mail (70150640000785245859), which was delivered on April 4, 2018.

<sup>4</sup> The Order did not resolve the legal consequences, if any, of the fact that Complainant faxed his request for extension to the Office of Administrative Law Judges on May 14, 2018, forty days after receipt of the Secretary’s Findings.

<sup>5</sup> On June 13, 2018, Complainant contacted this Office inquiring about filing procedures. A member of my staff informed him that a request for hearing must be submitted in writing, be served on the other side and that he should include any circumstances surrounding the reasons for any delay. Complainant advised my staff that a request would be forthcoming. However, as noted, Complainant has not further communicated with this Office nor filed any documents requesting a hearing or further extension of time to decide.

believe that a violation of 49 U.S.C. § 31105 occurred” becomes the final decision of the Secretary, and is not subject to judicial review.

Accordingly, this matter is DISMISSED, with prejudice.

**SO ORDERED:**

**STEPHEN R. HENLEY**  
Chief 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, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: [Boards-EFSR-Help@dol.gov](mailto:Boards-EFSR-Help@dol.gov)

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; 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).

If filing paper copies, 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 an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file 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. If you e-File your petition and opening brief, only one copy need be uploaded.

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 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 may include 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. If you e-File your responsive brief, only one copy need be uploaded.

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 you e-File your reply brief, only one copy need be uploaded.

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).