



Issue Date: 29 June 2018

CASE NO.: 2018-STA-00034

In the Matter of:

MARCUS SIMMONS,
Complainant,

v.

USA TRUCK, INC.,
Respondent.

ORDER DISMISSING COMPLAINT

This matter arises under the employee-protection provisions of Section 31105 of the Surface Transportation Assistance Act of 1982, U.S. Code, Title 49, § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 (“STAA”). Complainant Marcus Simmons alleges that he was terminated in retaliation for reporting his medical condition to the Employer.

Mr. Simmons filed a discrimination complaint with the Occupational Safety and Health Administration (“OSHA”) on November 16, 2016. OSHA issued the Secretary’s Findings dismissing Mr. Simmons’ complaint on July 7, 2017. Mr. Simmons filed his objection to the Secretary’s Findings by facsimile to the Chief Administrative Law Judge on March 5, 2018. I issued an Order to Show Cause on May 22, 2018 why this matter should not be dismissed, based on evidence that Mr. Simmons’ objection and request for hearing were untimely filed. As of the date of this Order, Mr. Simmons has not filed a response, and the time for doing so has passed.

The regulations implementing STAA require that a party wishing to object to the Secretary’s Findings and to request a hearing before an administrative law judge do so not later than 30 days after receipt of the Secretary’s Findings. 29 C.F.R. § 1978.106(a). If no party does so, the Secretary’s Findings become final 30 days after their issuance. 29 C.F.R. § 1978.105(c). In this case, almost nine months passed between the date of the Secretary’s Findings and the date that Complainant filed his objections and request for a hearing with the Chief ALJ. Accordingly, it appears that the objections and hearing request were untimely filed.¹

¹ Although the 30-day deadline is subject to equitable tolling, Complainant has presented no evidence and made no argument that he is entitled to it. I therefore find that he is not.

Accordingly, IT IS ORDERED that the complaint of Complainant Marcus Simmons is DISMISSED, and the Secretary's Findings are the final order of the Secretary.

SO ORDERED.

PAUL C. JOHNSON, JR.
District Chief Administrative Law Judge

PCJ, Jr./ksw
Newport News, Virginia