U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 23 December 2019

CASE NO.: 2019-STA-71

In The Matter Of:

ADRIANO BUDRI,
Complainant

v.

FIRSTFLEET, INC.,
Respondent

RULING ON COMPLAINANT'S MOTION FOR RECONSIDERATION

Current Procedural Status

This proceeding arises under the Surface Transportation Assistance Act of 1982[1] and its implementing regulations.[2] The Secretary of Labor is empowered to investigate and determine "whistleblower" complaints filed by employees of commercial motor carriers who are allegedly discharged or otherwise discriminated against with regard to their terms and conditions of employment because the employee refused to operate a vehicle when such operation would violate a regulation, standard, or order of the United States related to commercial motor vehicles.

After the case was referred to me and Complainant filed a Bill of Particulars, Respondent filed a Motion for Summary Dismissal on 20 Nov 19. Complainant filed his opposition to Respondent's Motion on 27 Nov 19. On 16 Dec 19, I issued my decision granting the Motion to Dismiss. Shortly thereafter, I received an addendum to Complainant's opposition, followed by Complainant's request for leave to file a Motion for Reconsideration.[3] I then informed the parties Complainant would have until 3 Jan 20 to file any Motion for Reconsideration, after which Respondent would have until 17 Jan 20 to file an answer. Complainant was then to have until 24 Jan 20 to file a reply. Nonetheless, Complainant submitted his motion for reconsideration by email on 20 Dec 19. Having reviewed both the addendum to Complainant's opposition to the

[1] 49 U.S.C. § 31105.
[2] 29 C.F.R. Part 1978.
[3] Notwithstanding my order that email filings would not be accepted and all filings should be made either by faxes of less than five pages or hardcopy delivery, Complainant continued to file multiple emails.

Motion to Dismiss and his Motion for Reconsideration, I have determined no answer from Respondent is necessary.

Discussion

Administrative Law Judges have discretion to either grant or deny a motion to reconsider.[4] For substantive guidance on motions for reconsideration, ALJs look to the Federal Rules of Civil Procedure.[5] To promote complete litigation in the first instance and avoid protracted post-trial motion practice, the courts have limited such motions. They are appropriate if 1) the moving party can present newly-discovered evidence not available at the time of hearing, 2) the law has changed in the interim, or 3) the record shows a manifest error of law or fact.[6]

Both Complainant's addendum and his Motion for Reconsideration are a reprise of his argument that his filing was not untimely. He argues that Respondent's action in providing information to Tenstreet did not start the 180 day filing period, because it was not final, unequivocal, and definite. He also argues that the 180 day period should be tolled because Respondent misled him as to its intentions regarding the information.

The applicable adverse action has been ruled to have taken place on 12 Jun 17, notwithstanding Complainant's argument that there was a continuing adverse action. His current complaint alleges no new adverse action. His addendum and Motion for Reconsideration are essentially additional arguments explaining why his filing was not untimely. That issue was previously fully litigated before an Administrative Law Judge, who ruled against him. That ruling was affirmed by the Administrative Review Board.[7]

The doctrine of claim preclusion or *res judicata* prevents the re-litigation of a claim in a second forum if: 1) the parties in the current action are the same as in the prior action; 2) the court that rendered the prior judgment was a court of competent jurisdiction; 3) the prior action terminated with a final judgment on the merits; and 4) the same claim or cause of action was involved in both actions.[8]

All four elements apply to the current claim. It alleges no new adverse action that was not previously considered. Complainant was afforded a full opportunity to litigate the timeliness of his claim as to that adverse action. He lost on that issue and his case was

[4] 29 C.F.R. § 18.93.

[5] *Galle v. Ingalls Shipbuilding, Inc.*, 33 BRBS 141 (1999); Fed. R.Civ. P. 59(e).

[6] *See e.g., In re Prince*, 85 F.3d 314 (7th Cir. 1996) *cert. den.* 519 U.S. 104; *Deutsch v. Burlington Northern R. Co.*, 983 F.2d 741 (7th Cir. 1992), *cert. den.* 507 U.S. 1030.

[7] Notwithstanding its later vacation of that ruling because of Complainant's filing in Federal District Court, which in turn dismissed his case in view of what it found to be a final agency decision dismissing his complaint and depriving him of the option of seeking *de novo* relief in Federal Court.

[8] *Abbs v.Con-Way Freight, Inc.*, ARB No. 08-017, ALJ No. 2007-STA-00037, slip op. at 7 (ARB July 27, 2010); *Montana v. United States*, 440 U.S. 147, 153 (1979).

dismissed. The current complaint falls squarely within the law regarding claim preclusion and *res judicata*. Nothing in Complainant's Motion for Reconsideration establishes newly-discovered evidence not available at the time of hearing, a change in law, or a manifest error of law or fact. The Motion for Reconsideration is denied.

ORDERED this 23rd day of December, 2019, at Covington, Louisiana.

PATRICK M. ROSENOW
Administrative Law Judge