



Issue Date: 05 June 2019

CASE NO.: 2019-STA-00010

In the Matter of:

LOUIS TURCOTTE,
Complainant,

v.

ALBERTSON'S, LLC, ALBERTSON'S COMPANIES,
AND SCOTT MELLEN, AN INDIVIDUAL,
Respondents.

ORDER APPROVING WITHDRAWAL OF CLAIM
AND
DISMISSING MATTER

This matter 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. Attorney Peter LaVoie represents Complainant. Attorney Carla Gunnin represents Respondents. The matter is set for hearing on August 7 and 8, 2019, in Portland, Oregon. On May 30, 2019, Complainant filed Complainant's Withdrawal of Objections and Motion to Dismiss Proceeding with Prejudice.

The regulations applicable to this proceeding provide:

At any time before the Assistant Secretary's findings and/or preliminary order become final, a party may withdraw objections to the Assistant Secretary's findings and/or preliminary order by filing a written withdrawal with the ALJ. . . . The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or order, and there are no other pending objections, the Assistant Secretary's findings and/or order will become the final order of the Secretary.

29 C.F.R. § 1978.111(c).

Complainant alleged that on or about February 16, 2018, he suffered an adverse action by Respondents when he was issued driver demerit points. Complainant filed a complaint with the

Occupational Safety and Health Administration (“OSHA”) on March 19, 2018. On December 10, 2018, OSHA acting on behalf of the Assistant Secretary of Labor determined that there was no nexus between the alleged adverse action and Complainant’s protected activity and dismissed the complaint. On January 4, 2019, this Office timely received Complainant’s appeal of the OSHA determination.

The findings of the Assistant Secretary are not yet final and there are no other objections pending. Further, there is no indication that the withdrawal is due to a settlement pursuant to 29 C.F.R. § 1978.111(d)(2). *See* 29 C.F.R. § 1978.111(c) (“If objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.”). Therefore, I approve the request to withdraw the complaint as to all Respondents. The Assistant Secretary’s December 10, 2018, findings are the final order of the Secretary. All dates are vacated. The matter is dismissed with prejudice.

SO ORDERED.

RICHARD M. CLARK
Administrative Law Judge