

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
BOSTON, MASSACHUSETTS

Issue Date: 28 October 2021

CASE NO.: 2020-STA-00087

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*In the Matter of:*

ANTHONY DiLEONARDO,  
*Complainant,*

v.

UNITED PARCEL SERVICE,  
*Respondent.*

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Before: Timothy J. McGrath  
Administrative Law Judge

Appearances:

Anthony DiLeonardo, self-represented

Raymond Perez II, Esq., Jackson Lewis P.C., Atlanta, Georgia, for Respondent

**DECISION AND ORDER DENYING COMPLAINT**

On February 10, 2020, Anthony DiLeonardo (“Complainant”) filed a complaint with the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”) alleging that the United Parcel Service (“UPS” or “Respondent”) violated the employee protection provisions of the Surface Transportation Assistance Act (“STAA” or “Act”) when it terminated his employment on October 23, 2019, in retaliation for reporting various workplace safety concerns. *See* 49 U.S.C. § 31105.

OSHA terminated its investigation pursuant to Complainant’s request and dismissed the complaint on June 19, 2020, finding no violation of the Act. Complainant timely filed objections to the findings and requested a hearing before the Office of Administrative Law Judges (“OALJ”). The matter was then assigned to me and I presided over a virtual hearing via the Microsoft Teams Meeting platform on February 8, 2021. The trial transcript is referred to herein as “TR.”

At the hearing, I admitted Administrative Law Judge Exhibits (“ALJX”) 1 and 2; Joint Exhibit (“JX”) 1; Complainant’s Exhibits (“CX”) 1 through 8; and Respondent’s Exhibits (“RX”) 1 through 5, and 7 through 10. Four witnesses, including Complainant, testified. Complainant<sup>1</sup> and Respondent filed post hearing briefs, Compl. Br. and Resp’t Br., respectively, on April 16, 2021.

I base my decision on all of the evidence admitted, relevant controlling statutory and regulatory authorities, and the arguments of the parties.<sup>2</sup> As explained in greater detail below, I find Complainant failed to show by a preponderance of the evidence that he engaged in protected activity.

## I. STIPULATIONS

The parties stipulated to a number of things. Those stipulations are supported by the record, and I make the following findings of fact based upon them:

- (1) Complainant, Anthony DiLeonardo, started his employment with UPS in October 2014, as a full-time driver working out of the Times Plaza Center at the Foster Ave facility;
- (2) During his employment with UPS Complainant was a member of the Teamsters Local Union 804;
- (3) In that role with UPS, Complainant, Anthony DiLeonardo, was an employee as defined in 49 U.S.C. § 31101(2);
- (4) Respondent, United Parcel Service, Inc., is a motor carrier operating in interstate commerce and an employer subject to the employee protection provisions of the Surface Transportation Assistance Act, 49 U.S.C. § 31105;
- (5) Complainant’s supervisor was Mike Buscemi. Chris Travaglia was the UPS Division Manager at the Foster Ave facility. Warren Pandiscia was the UPS District Labor Relations Manager and Tom Dullahan was the UPS Labor Relations Manager for the North Atlantic District;

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<sup>1</sup> In its brief, Respondent requests that I not accept Complainant’s brief because it does not conform to the requirements outlined in my February 24, 2021, Briefing Order. As a self-represented litigant, Complainant is to be held to the same standards a represented party. Nonetheless, I will accept Complainant’s brief, albeit not in strict conformance, in order to aid my analysis of his claim.

<sup>2</sup> In *Austin v. BNSF Ry. Co.*, ARB No. 17-024, ALJ No. 2016-FRS-13, slip op. at 2 n.3 (ARB Mar. 11, 2019) (per curiam), the Administrative Review Board (“ARB”) noted that an administrative law judge (“ALJ”) need not include a summary of the record in the Decision and Order, as it is assumed that the ALJ reviewed and considered the entire record in making his or her decision. The ARB stated that what is more helpful for its review of whether the ALJ’s findings of fact are supported by substantial evidence of record is a tightly-focused set of findings of fact. Accordingly, in this Decision and Order I focus specifically on findings of fact pertinent to the issues in dispute. I have, however, reviewed and considered the entire record.

- (6) Complainant was issued a Notice of Discharge on October 23, 2019, for failure to follow methods and procedures, dishonesty, falsification of records, lying during an investigation with the intent to deceive the Company, and falsification on his employment application;
- (7) A hearing was held at the Foster facility on October 28, 2019, which upheld his termination;
- (8) Complainant filed a grievance over his discharge through Local 804. A panel hearing was convened on November 19, 2019, and his discharge was upheld;
- (9) Complainant filed with OSHA a complaint against UPS alleging retaliatory employment practices in violation of the STAA on February 10, 2020;
- (10) Complainant requested and OSHA did terminate its investigation of his STAA complaint on or about June 19, 2020; and
- (11) Complainant filed objections and requested a hearing before an Administrative Law Judge to hear his STAA complaint on June 23, 2020.

JX 1.

## **II. FINDINGS OF FACT**

### **A. Factual Background**

Complainant worked as a driver for UPS for about five years until he was terminated on October 23, 2019. TR 17. Complainant began working out of the Farmingdale Center in Melville, New York. *Id.* After becoming a member of the Teamsters Local Union 804, he worked out of the Times Plaza Center at the Foster Avenue facility in Brooklyn, New York. *Id.*

Complainant, a member of the safety committee at UPS, was a vocal proponent of safety. TR 18. He testified the purpose of the safety committee was to “limit the problems that occur in the building and to fix them before they become a problem for both UPS and for the safety of the members in the building.” TR 22. During his time on the safety committee, other employees brought a number of violations to his attention. *Id.* According to Complainant, “[t]he majority of them . . . were ignored” by management. *Id.*

#### **1. OSHA Complaint**

In early October 2019, an anonymous complaint was filed with OSHA outlining several safety issues at the Foster Avenue facility. TR 18, 53. Complainant recalled that complaint

identified “a problem with the charging station in . . . bolt carts,” and structural issues with the building.<sup>3</sup> *Id.* Package Division Manager Chris Travaglia expounded,

there was a complaint that there weren’t the proper gloves available in the auto shop. There was a complaint about some structural integrity issues with beams in the back by the primary. There was a complaint about where one of our mobile delivery units attaches to the building that the electrical connection there was compromised and exposed wires were there.

TR 124.

On or about October 5, 2019, an OSHA investigator visited the facility. The investigator inspected the areas outlined in the complaint along with Mr. Travaglia, the Plant Engineering Manager, the Safety Manager for Long Island, and CHSP Manager Maureen Rossi. TR 125. After walking the entire facility, the OSHA inspector determined there were a “few [bolt] carts that were missing the ground stems.” TR 126.

This finding prompted UPS to look at its daily vehicle inspection report for the bolt carts. Mr. Travaglia testified UPS “fixed everything from a hardware standpoint” and “put a new process in place where one of the safety members on the preload actually double-checks” the bolt carts. TR 126-27. UPS was eventually issued a fine for the violation sometime in January of 2020, after Complainant’s termination. Mr. Travaglia was not issued any fines or citations in his personal capacity. TR 127.

According to Complainant, the OSHA complaint “enraged” Mr. Travaglia, TR 18; it “made a mockery of Chris Travaglia” and was “not beneficial to him and to his advancement” at UPS. TR 23; *see* Compl. Br. at 4 (stating the complaint “ruined Chris Travaglia’s career advancement”). Despite the OSHA complaint being anonymous,<sup>4</sup> Complainant stated Mr. Travaglia singled him out as the anonymous filer. Complainant explained, “Chris Travaglia made multiple statements to multiple people regarding the fact that I was the one who made this OSHA complaint and was bringing all these problems on him.” TR 18.

After the OSHA inspection, Complainant testified that Mr. Travaglia harassed and threatened him, prompting Complainant to file a “formal complaint with the UPS corporate helpline” along with a union grievance. TR 18; CX 3. Additionally, an emergency safety meeting was held at the Foster Avenue facility during which Mr. Travaglia allegedly informed employees

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<sup>3</sup> In his closing brief, Complainant states the OSHA complaint also identified problems with tire tread depth and vehicles parked too closely together. Complainant did not make mention of these complaints at the hearing. Compl. Br. at 3. Additionally, Mr. Travaglia testified there was “no complaint of cars being too close together” or tire issues, and “none of that was inspected by the” OSHA inspector. TR 144. As the OSHA complaint against UPS is not part of the record, I am unable to determine precisely what was included. However, since Mr. Travaglia, as the Division Manager accompanied the OSHA investigator on the walk-through, I will credit his testimony that issues with tread depth and vehicles parked too closely together were not part of the complaint.

<sup>4</sup> Moreover, Mr. Travaglia credibly testified he did not know who filed the OSHA complaint. TR 123-25.

that there is a “hierarchy in UPS” and safety concerns should be “kept in-house.” TR 23. Complainant testified Mr. Travaglia threatened him again after this meeting. TR 24.

## **2. Poorly Stacked Boxes**

At the hearing, Complainant presented photographs of packages scatted throughout the UPS facility. *See* CX 4, CX 5. CX 4 consists of five separate photos taken on different dates in September 2019 that purportedly show a “massive amount of boxes” blocking employee walkways. TR 39. CX 5 shows “the boxes that are thrown, blocking an entire pathway and blocking a ladder that is used for the people . . . on the catwalks.” TR 35. Complainant explained this was an “obvious hazard that was ignored by supervision in order to speed up the loading and unloading of UPS trucks.” *Id.*

Despite stating that the hazard was “ignored by supervision,” Complainant testified it “was taken care of in-house by the safety committee, the management, and the employees.” *Id.* He was not disciplined after bringing these issues to the attention of UPS management. TR 36.

## **3. Standing Water**

Complainant also presented a photograph that showed some standing water at the facility. CX 6. The photo, taken by a member of the safety committee on October 2, 2019, shows “a puddle that is approximately 50 feet in length and about 12 feet wide that is right underneath an electrical panel which has two major components to shut off electrical components.” TR 43. Complainant explained that this issue was “rectified in a timely manner” by himself and the safety committee. TR 43-44.

## **4. Termination**

Complainant had a lengthy history of poor performance and discipline while at UPS. *See* TR 152 (“[H]e had an extraordinary disciplinary history in a fairly short period of time at UPS.”). Complainant’s labor log, a UPS document that tracks all labor-related actions taken with respect to an employee, showed he was counseled and warned on numerous occasions for failing to follow proper procedures. RX 10 at 87, 120-21. Several of those failures resulted in suspensions and discharges that were reduced in order to give Complainant more opportunities to improve. *Id.*; *see* RX 1, RX 2.

The final incident that precipitated Complainant’s termination occurred when he failed to deliver a package on October 22, 2019. Mr. Travaglia testified

We had packages assigned to his route that was (sic) left on the vehicle. We had issues with a package that Mr. DiLeonardo brought in that said he didn’t have – he couldn’t deliver. He had sat and waited on the road for I believe it was 38 minutes for a letter box time to come up, and failed to deliver the package that he had on his vehicle, which was only a block or two away.

TR 110-11.

The UPS Labor Relations Manager for the North Atlantic District, Tom Dullahan,<sup>5</sup> who investigated the October 22, 2019, incident as part of the discharge panel, TR 149, explained the facts surrounding the event in more detail. *See* TR 147. He testified that after Complainant made his “last delivery at 17:52, [he] had one delivery two blocks away, and [he] had the letter box that . . . was scheduled for an 18:30 pick up.” TR 178. Instead of delivering the final package during the 38 minute period between his penultimate delivery and the scheduled letter box pickup, Complainant idled in his truck making personal phone calls. TR 158-59.

On October 23, 2019, UPS issued a Notice of Discharge to Complainant for “falsification of records, falsification of his application, failure to follow methods and procedures, lying during an investigation [and] intent to deceive.” RX 4. A local level hearing was held at the Foster Avenue facility on October 28, 2019, during which Complainant’s discharge was upheld. RX 5.

Subsequently, on November 5, 2019, Complainant filed a grievance through his union challenging his termination. RX 6. A hearing before the Grievance Panel was held on November 19, 2019. *See* RX 7. The panel is “made up of six individuals: three from the company, three from the union. There’s a chairperson, and they basically flip-flop back and forth. One month the union is the chair, the next month the company is the chair. There is an impartial arbitrator who sits in on the hearings.” TR 153. The six panel members are independent, having no prior knowledge of the charged employee or the circumstances of the case.

The panel hearing proceeds in much the same fashion as a trial before the OALJ. The company, as the moving party, has the burden of proof and presents its case first. TR 154. The union then presents its case on behalf of the employee. *Id.* At that point there is a rebuttal phase and finally a questions phase where the panel and arbitrator can pose questions to the parties. *Id.*

After reviewing the evidence, the majority of the panel voted to uphold the discharge. TR 156; RX 7. Complainant signed a document that indicated the panel’s decision was “final, conclusive and binding” and that he was “given every opportunity to present to the Panel, any and all information pertinent to [his] case.” RX 7.

In contrast, Complainant testified that he was terminated from UPS “because of the OSHA complaint and because [UPS] wanted to retaliate and to intimidate the employees.” TR 28.

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<sup>5</sup> Mr. Dullahan detailed his thorough review of the materials related to Complainant’s employment and the case presented before the discharge panel. Based on his extensive knowledge of Complainant’s case, I find him an extremely credible witness.

## B. Credibility

Before addressing the merits, it is necessary to discuss Complainant's credibility. Though many of the facts that I will examine in the section do not relate to my ultimate conclusion on protected activity, they provide valuable insight into the credibility of Complainant's testimony.

Prior to working at UPS, Complainant was a police officer with the Nassau County Police Department ("NCPD"). TR 60. On March 30, 2014, Complainant was terminated from the NCPD after an investigation. Despite this, Complainant indicated on his UPS job application that he retired from the NCPD and "checked" a box stating that he had never been discharged from a previous employer. RX 3 at 4.

The circumstances surrounding Complainant's termination are troubling. According to the NCPD Inspector, Complainant, while off duty, got into an altercation with a taxi driver in Huntington Station, New York. Complainant allegedly fired five shots from his pistol at the windshield of the taxi, striking the unarmed taxi driver in the chest and arm. Complainant then ran up to the driver's side of the taxi, smashed the window in and hit the taxi driver with the butt of his gun, and punched the driver in the face several times resulting in a broken nasal bone. RX 8. As a result of this incident, the Inspector found Complainant's actions "reflect unfavorably upon his moral character and fitness for public service. . . . In light of the egregious nature of these violations *the only appropriate punishment in this case is termination.*" RX 8 at 7 (emphasis added).

In reading this report, the only rational conclusion is that Complainant was terminated from the NCPD.<sup>6</sup> Complainant, however, insisted at hearing that was not so. *See, e.g.*, TR 46 ("One of my lawyers informed me that this was an ongoing [proceeding] and wasn't a final decision made by my previous employer. My previous employment continued to try to finalize my termination, and at the time I filled out my application in 2014 I was still awaiting the decision."); TR 50 ("I was specifically told by my lawyer that it was ongoing and not final and I was to step down in order to expedite these actions."); TR 185 ("[W]hat was the best of my knowledge [when filing the UPS job application] was that I was not terminated by the Nassau County Police Department.").

Complainant filed an action in the Supreme Court of the State of New York, County of Nassau, requesting the court vacate the NCPD's decision "terminating the employment of [Complainant]" and reinstate him "to his prior employment." RX 8 at 22. When discussing this on cross-examination, the following colloquy occurred:

Q. And so you were in the process, through your attorney, you were challenging the decision that the Nassau County Police Department, that they had terminated your employment and you were challenging that; is that correct?

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<sup>6</sup> Complainant was also evasive upon questioning by Attorney Perez about ever receiving the Inspector's report, TR 68, which is doubtful.

A. No. My attorney made me aware, as I stated before, that this was an ongoing thing, and the deal he worked out was between them and him. And the deal that he worked out and he informed me about was to step down in order to expedite these proceedings. Like I mentioned before, there were multiple proceedings going on.

Q. All right. But you did file a petition to challenge your termination from the police department; is that correct?

A. *My lawyer did. I did not.*

Q. *But your lawyer did on your behalf?*

A. *Yes.*

TR 61-62 (emphasis added). It is clear from this exchange that Complainant is attempting to separate himself from his attorney in order to claim ignorance as to the precise legal status of his termination. *Cf.* Compl. Br. at 6 (“My lawyer has assured me that because the deal he worked out with the county is still ongoing we will have a determination of my employment status when the civil lawsuit is completed.”).

There is no doubt Complainant challenged his termination; however, challenging the validity of the termination does not automatically render it void. Until a court makes a decision otherwise, Complainant was terminated from the NCPD. Complainant was aware of this when he applied to UPS in 2014 and either affirmatively lied on the job application or attempted to parse words. Further, Complainant’s insistence at hearing that he was not terminated, even when confronted with the NCPD Inspector’s report and his own petition challenging his termination, strains credulity.

Respondent also alleged, as a basis for termination, that Complainant repeatedly failed to follow proper UPS methods and procedures. *See* Resp’t Br. at 13. As described above, one such incident occurred on October 22, 2019, when Complainant failed to timely deliver a package.

In an attempt to explain his failure to deliver the package, Complainant testified he sent messages at 15:51 and 17:15 to the office that his DIAD, a device that is used by UPS drivers to scan packages, was dying. TR 30-31; *see* CX 1, CX 2. It is not clear why the DIAD’s low battery would impact Complainant’s ability to deliver the final package in his truck. *See e.g.*, TR 111 (stating “even if . . . a DIAD board had completely died and we had a package left to deliver, it is common practice that we would leave that package . . . [and] update the status” upon return to the building); TR 181 (explaining Complainant should have “take[n] down the tracking information, [and] when [he got] back to the office put it into a DIAD board.”). Complainant’s explanation is particularly mystifying because he was able to complete a delivery at 17:52, after sending the second low battery message to the office at 17:15. It follows that if Complainant was able to make a delivery 37 minutes after informing the office that the DIAD was dying, he should have also been able to make the final delivery that was located only two blocks away.



Finally, in reviewing the records, Mr. Dullahan found “falsification of next-day air packages” that were to be delivered by Complainant. TR 159. Mr. Dullahan determined Complainant recorded his air packages prior to the 10:30 deadline “so that they looked like they were delivered on time. However, when we checked GPS, he was in one location sitting in the truck recording the packages prior to 10:30. So it looked like everything was on time, yet he didn’t deliver them until after 10:30.” *Id.*; RX 10. Once again, Complainant exhibited a willingness to manipulate records in order to serve a particular narrative, in this case, that he delivered the packages on time.

Complainant’s evasiveness and blatant misrepresentations cast doubt on the whole of his testimony. For these reasons, I find Complainant is not a credible witness.

### III. CONCLUSIONS OF LAW

#### A. STAA Framework

Under the employee-protection provision of the STAA

A person may not discharge an employee, or discipline or discriminate against an employee . . . because the employee . . . has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order . . . or . . . the person perceives that the employee has filed or is about to file a complaint or has begun or is about to begin a proceeding related to the violation of a commercial vehicle safety or security regulation, standard, or order.

49 U.S.C. § 31105(a)(1)(A)(i)-(ii).

A complainant need only make a *prima facie* showing, by a preponderance of the evidence, that his protected activity was a contributing factor in the adverse action taken against him. In the face of such proof, the employer must demonstrate by clear and convincing evidence that it would have taken the same action against the complainant in the absence of his protected activity. The burden then shifts back to the complainant to prove that the proffered reason is actually a pretext for unlawful retaliation. *Day v. Staples, Inc.*, 555 F.3d 42, 53 (1st Cir. 2009).

To establish a *prima facie* case of retaliatory discharge, Complainant must prove: (1) that he engaged in protected activity under the STAA; (2) that he was the subject of adverse employment action; and (3) that there was a causal link between his protected activity and the adverse action of his employer. *Cooper v. City of North Olmsted*, 795 F.2d 1265, 1272 (6th Cir. 1986) (citation omitted);

## 1. Protected Activity

Complainant did not refuse to drive a vehicle so his alleged protected activity falls under section 31105(a)(1)'s so-called "Complaint Clause." The "Complaint Clause" protects from retaliation an "employee . . . [who] has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order." 49 U.S.C. § 31105(a)(1)(A). Internal complaints to company management, whether written or oral, suffice to satisfy the complaint requirement of section 31105(a)(1)(A)(i). *See Clean Harbors Env'tl. Servs. v. Herman*, 146 F.3d 12, 22-23 (1st Cir. 1998); *Moon v. Transport Drivers, Inc.*, 836 F.2d 226, 228-29 (6th Cir. 1987); *Yellow Freight Systems, Inc. v. Reich*, 38 F.3d 76, 83-84 (2d Cir. 1994); *Manske v. UPS Cartage Servs., Inc.*, 870 F. Supp. 2d 185, 203-05 (D. Me. 2012). To qualify for protection, a complaint must be based on a reasonable belief that the company was engaging in a violation of a motor vehicle safety regulation.

Respondent argues that Complainant's complaint does not allege that any commercial motor vehicle safety or security regulation has been violated. As outlined in detail above, there are three potential instances of protected activity: (1) the October 2019 OSHA complaint; (2) poorly stacked boxes; and (3) standing water.

## 2. Analysis

The crux of Complainant's case is best described in his closing brief:

Many hazards were brought to Chris Travaglia's attention by the safety committee. . . . These violations were more serious in nature than the violations in the [October 2019] OSHA complaint. . . . Those violations . . . were fixed. The [October 2019] OSHA violations were fixed as well but because there was a formal complaint[,] I was fired.

Compl. Br. at 9-10. In other words, the subverting of the informal and internal procedures to deal with safety concerns by filing a complaint with OSHA resulted in certain repercussions for UPS and Mr. Travaglia that led to Complainant's firing. As explained below, Complainant's argument is fundamentally flawed.

A complaint filed with OSHA generally constitutes protected activity. Here, a complaint was filed with OSHA in October of 2019, which resulted in an OSHA investigator visiting the facility. The complaint, which consisted of "multiple [OSHA] violations that were noticed, reported, and ignored" by UPS, was anonymously filed by members of the safety committee.

Curiously, Complainant fervently and repeatedly denied at hearing<sup>7</sup> being the person who filed the OSHA complaint. He testified he "never made a notion that [he] did file the complaint and that "[n]obody was aware [of] who made the complaint." TR 53-54; *see* RX 9 at 6

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<sup>7</sup> The first time Complainant appears to admit filing the anonymous report is in his closing brief.

(“Complainant stated that someone else made an OSHA complaint on the truck and facility safety and he was blamed.”). Because Complainant denies filing the complaint, I cannot find that it constitutes protected activity. That is, a person cannot *engage* in protected activity if they refuse to acknowledge their involvement in said activity. Accordingly, under these facts, I find the anonymous OSHA complaint does not constitute protected activity.

Further, even assuming Complainant was the anonymous filer, he has failed to show that the issues raised in the complaint fall within the purview of the STAA. Respondent argues that the subject of the OSHA complaint is comprised of “general safety concerns at the building,” which do not constitute protected activity. Resp’t Br. at 12.

For support, Respondent points to *Evans v. USF Reddaway, Inc.*, No. 1:15-CV-00499-EJL-REB, 2017 U.S. Dist. LEXIS 102510 (D. Idaho June 30, 2017). In *Evans*, the complainant made a number of complaints regarding the conditions at the USF Reddaway terminal. *Evans*, 2017 U.S. Dist. LEXIS 102510, at \*3. Specifically, he reported “dirt, dust, gravel, poor lighting, and lack of fencing/security” in violation of various federal motor carrier safety regulations, which made the terminal “unsafe for drivers.” *Id.*; *see id.* at \*18.

Despite the fact that the district court acknowledged that the “conditions at the terminal may impact the ability of the drivers’ to carry out . . . safety obligations,” it ultimately found that the concerns raised in the complaints did not constitute protected activity under the complaint clause. *Id.* at \*23-\*24. The district court reasoned that the complaints only pertained to the “working conditions at the terminals” and thus did “not relate to a violation or possible violation of any commercial motor vehicle safety regulation.”<sup>8</sup> *Id.*

Similar to *Evans*, Complainant raised a number of safety concerns at the UPS Foster Avenue facility. Those concerns contained in the OSHA complaint, which include exposed wires, proper glove procedure, and the structural integrity of beams, do not reasonably relate to commercial motor vehicle safety. Complainant neither testified nor presented evidence as to how the violations outlined in the October 2019 OSHA complaint affected the safe operation of UPS trucks. Additionally, unlike in *Evans*, Complainant cites to no regulations that the purported safety concerns violate. That is, Complainant fails to explain how the safety complaints outlined above relate in any way to “a commercial motor vehicle safety or security regulation, standard, or order.” 49 U.S.C. § 31105(a)(1)(A).

The same logic extends to the complaints of poorly stacked boxes and standing water, which relate solely to the safety of the facility overall.<sup>9</sup> These complaints relate to unsafe working conditions within the facility and ostensibly have no effect on the safe operation of the trucks

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<sup>8</sup> In reaching this conclusion, the district court also found the complaints did not fall under the purview of the federal motor carrier safety regulations cited by the complainant. *Evans*, 2017 U.S. Dist. LEXIS 102510, at \*18-\*24.

<sup>9</sup> I make no determination as to whether the complaints constitute violations of OSHA’s workplace safety regulations. I do note, however, that Complainant’s claims appear to be more appropriately cognizable under the employee protection provision of the Occupational Safety and Health Act, 29 U.S.C. § 660(c).

before or after leaving the facility. While I recognize that Complainant is self-represented<sup>10</sup>, and thus may be unfamiliar with legal practice and procedure, he is nonetheless required to show that his purported protected activity reasonably relates to a commercial motor vehicle safety violation; Complainant failed to make such a showing.

## **B. Conclusion**

At its core, Complainant's claim centers on broad allegations of malfeasance by Mr. Travaglia and UPS that are not borne out by the record. Though Complainant raised certain safety concerns, those concerns do not reasonably relate to a commercial motor vehicle safety violation. As I find the complaints do not constitute protected activity, there is no need to address the remaining elements of the STAA claim.

## **ORDER**

Accordingly, **IT IS ORDERED** that the STAA complaint filed by Anthony DiLeonardo against UPS is **DENIED** and his claim is **DISMISSED**.

**SO ORDERED.**

**TIMOTHY J. McGRATH**  
Administrative Law Judge

Boston, Massachusetts

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<sup>10</sup> An administrative law judge "must accord a party appearing *pro se* fair and equal treatment, but a *pro se* litigant cannot generally shift the burden of litigating his case to the courts, nor avoid the risks of failure that attend his decision to forego expert assistance." *Pik v. Credit Suisse, AG*, ARB No. 2011-0034, slip op. at 4-5 (ARB May 31, 2012).

**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 the administrative law judge's decision.

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. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, the Associate Solicitor, Division of Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

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).

### **IMPORTANT NOTICE ABOUT FILING APPEALS:**

**The Notice of Appeal Rights has changed because the system for online filing has become mandatory for parties represented by counsel. Parties represented by counsel must file an appeal by accessing the eFile/eServe system (EFS) at <https://efile.dol.gov/EFILE.DOL.GOV>.**

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Information regarding registration for access to the new EFS, as well as user guides, video tutorials, and answers to FAQs are found at <https://efile.dol.gov/support/>.

Registration with EFS is a two-step process. First, all users, including those who are registered users of the former EFSR system, will need first create an account at [login.gov](https://login.gov) (if they do not have one already). Second, if you have not previously registered with the EFSR system, you will then have to create an account with EFS using your [login.gov](https://login.gov) username and password. Once you have set up your EFS account, you can learn how to file an appeal to the Board using the written guide at <https://efile.dol.gov/system/files/2020-10/file-new-appeal-arb.pdf> and/or the video tutorial at

<https://efile.dol.gov/support/boards/new-appeal-arb>. Existing EFSR system users will not have to create a new EFS profile.

Establishing an EFS account should take less than an hour, but you will need additional time to review the user guides and training materials. If you experience difficulty establishing your account, you can find contact information for login.gov and EFS at <https://efile.dol.gov/contact>.

If you file your appeal online, no paper copies need be filed with the Board.

**You are still responsible for serving the notice of appeal on the other parties to the case and for attaching a certificate of service to your filing. If the other parties are registered in the EFS system, then the filing of your document through EFS will constitute filing of your document on those registered parties. Non-registered parties must be served using other means. Include a certificate of service showing how you have completed service whether through the EFS system or otherwise.**

#### *Filing Your Appeal by Mail*

Self-represented (pro se) litigants may, in the alternative, file appeals using regular mail to this address:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W., Room S-5220,  
Washington, D.C., 20210

#### *Access to EFS for Other Parties*

If you are a party other than the party that is appealing, you may request access to the appeal by obtaining a login.gov account and EFS account, and then following the written directions and/or via the video tutorial located at:

<https://efile.dol.gov/support/boards/request-access-an-appeal>

#### *After An Appeal Is Filed*

After an appeal is filed, all inquiries and correspondence should be directed to the Board.

#### *Service by the Board*

Registered e-filers will be e-served with Board-issued documents via EFS; they will not be served by regular mail. If you file your appeal by regular mail, you will be served with Board-issued documents by regular mail; however, you may opt into e-service by establishing an EFS account, even if you initially filed your appeal by regular mail.