



Issue Date: 22 July 2021

OALJ Case No: 2021-STA-00046
OSHA Case No.: 2-1150-21-035

In the Matter of:

RICHARD D. JAMISON,
Complainant,

v.

SEASHORE ASPHALT CORPORATION,
Respondent.

**DECISION AND ORDER APPROVING WITHDRAWAL, AFFIRMING OSHA
DETERMINATION, AND DISMISSING COMPLAINT**

This proceeding arises under the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 31105 (“STAA”) and the regulations promulgated thereunder at 29 C.F.R. Part 1978.

On or about February 11, 2021, Complainant, Richard D. Jamison, filed a complaint with the U.S. Department of Labor’s Occupational Safety and Health Administration (“OSHA”) alleging Respondent, Seashore Asphalt Corporation, violated STAA’s employee protection provisions when it terminated him for complaining about working conditions to a state official.¹

After conducting an investigation, OSHA’s Assistant Regional Administrator issued a final determination letter on April 30, 2021, finding no violation of the STAA and dismissing the complaint. By letter dated May 11, 2021, Complainant filed objections and requested a hearing before an administrative law judge.

On June 14, 2021, this office received Complainant’s request to withdraw his claim (“Request”).²

On June 30, 2021, the undersigned issued a Notice of Assignment and Show Cause Order (“Show Cause Order”). The Show Cause Order advised Complainant that his complaint cannot be withdrawn after OSHA has issued the Secretary’s preliminary determination. Complainant was

¹ The complaint does not state the reason why Complainant spoke to the state official. In OSHA’s final determination letter dated April 30, 2021, it is detailed Complainant complained about Respondent’s alleged violation of hours of service rules.

² Claimant’s Request appears to be in the form of an e-mail response to the Notice of Docketing which was issued on May 18, 2021.

further advised that (1) his Request will be construed as a withdrawal of his objections to OSHA's determination as per the regulations and (2) upon the approved withdrawal of objections to the Secretary's findings, OSHA's determination becomes the final order of the Secretary. The Show Cause Order directed Complainant to show cause, in writing, why his Request should not be construed as withdrawal of his objections to the OSHA determination, within seven days of its receipt. The Show Cause Order provided that Claimant's failure to respond will be deemed a waiver of any objection to the actions proposed in the order.

To date, no response to the Show Cause Order has been received from Complainant and the time limit for such response has expired. Complainant's Request is hereby construed as a withdrawal of his objections to the Secretary's findings and is hereby accepted.

The implementing regulations for STAA provide that:

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. . . . 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). The undersigned finds that Complainant may withdraw his objections to the Assistant Secretary's findings because no final decision has been issued in this matter. As it is unopposed, and upon due consideration of the record, Complainant's Request will be GRANTED.

The undersigned hereby APPROVES Complainant's withdrawal of his objections to the Assistant Secretary's findings and DISMISSES this case with prejudice. The Assistant Secretary's findings and order in this matter as outlined in the April 30, 2021 OSHA determination, constitute the final order of the Secretary.

SO ORDERED.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey

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

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, 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).