UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
San Francisco, CA

Issue Date: 26 April 2024

CASE NO.: 2023-STA-00051

In the Matter of:

LUCIANO ABRAHAM MIRANDA JR.,
Complainant,

v.

PRO DRIVERS WEST, INC.,
Respondent.

ORDER GRANTING MOTION FOR SUMMARY DECISION

Pending before the undersigned is the Motion for Summary Decision submitted by Pro Drivers West, Inc. ("Respondent"). Respondent moves for summary decision on the ground that Luciano Miranda ("Complainant") cannot establish that he suffered an adverse employment action as a result of protected activity based on the factual allegations asserted in the complaint, and it moves the undersigned to find in Respondent's favor as a matter of law. Complainant was notified by the undersigned of the Motion for Summary Decision and the proper way to respond. (Order Giving Complainant Notice of Summ. Decision, Feb. 28, 2024.) He did not respond to the motion or to the undersigned's subsequent notification to Complainant of Respondent's filing of the motion. Upon a review of the record and the relevant legal authority, the undersigned **GRANTS** the Motion for Summary Decision.

I. Factual Background

Complainant was an employee of Respondent staffed to work for DHE Terminal as a driver. (Quintero Aff. ¶ 3.) On January 26, 2023, DHE Terminal management called Respondent and asked that Complainant no longer be assigned to them as a driver, and Respondent subsequently removed Complainant from this assignment.

(Quintero Aff. ¶ 5.) Complainant had a restricted driver's license that only allowed him to drive automatic transmission commercial vehicles, which caused a delay in reassigning Complainant because Respondent struggled to find another assignment for which he was qualified. (Quintero Aff. ¶¶ 4, 6.) Complainant called Respondent on March 1, 2023, and made "strange" statements that led Respondent to change his status to "inactive" and cease looking for jobs for him. (Quintero Aff. ¶¶ 7–8.) After learning that he had been changed to "inactive" status, Complainant emailed Respondent on March 9, 2023, and again spoke with a representative of Respondent on the phone, during which he was asked to send a detailed email of his complaints. (Quintero Aff. ¶¶ 10–12.) He sent this detailed account on March 21, 2023. (Quintero Aff. ¶ 13.) He listed the dates and times of his complaints to his supervisor as well as their substance, which included concerns about noises coming from his vehicles, harassment from other employees, and various safety hazards. (Ex B to EX 1 to Mot. Summ. Decision.)

Complainant filed a complaint with the Occupational Health and Safety Administration ("OSHA") on March 9, 2023, alleging that Respondent reduced his hours and demoted him in retaliation for his reports of commercial motor vehicle safety concerns related to noise. (Online Compl. Summ.) OSHA issued its findings on May 8, 2023, finding that Complainant had not met the burden of establishing retaliation against him and that the facts alleged did not meet the requirements for investigation. (Secretary's Findings, May 8, 2023.) Complainant objected and requested a hearing from the Office of Administrative Law Judges ("OALJ") on May 12, 2023. (Complainant's Objection to Secretary's Findings and Req. for Hr'g.) The matter was then assigned to the undersigned for a hearing and adjudication.

II. Legal Standard

An administrative law judge may enter summary decision for a party on an issue where the movant shows that there is not a genuine dispute as to any material fact. 29 C.F.R. § 18.72(a); *Bondurant v. Southwest Airlines, Inc.,* ARB No. 14-049, 2016 DOL Ad. Rev. Bd. LEXIS 8*, at 2 (DOL Admin. Rev. Bd. Feb. 29, 2016). "[T]he mere existence of *some* alleged factual dispute between the parties

will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S. Ct. 2505 (1986) (emphasis in original). A fact is material where it might impact the outcome of the case under the relevant legal authority. *Id.* at 248. A dispute is genuine where there is sufficient evidence to allow a reasonable trier of fact to decide in favor of the nonmoving party. *Id.* When ruling on a motion for summary decision, the adjudicator views the evidence in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88, 106 S. Ct. 1348 (1986). "If the complainant fails to establish an element essential to his case, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." *Coates v. Southeast Milk, Inc.*, ARB No. 05-050, 2007 DOL Ad. Rev. Bd. LEXIS 83*, at 9 (DOL Admin. Rev. Bd. July 31, 2007) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)) (internal quotations omitted).

The party moving for summary decision bears the initial burden of identifying the portions of the record that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548 (1986). Where the opposing party bears the burden of proof at hearing, the moving party need only demonstrate the absence of evidence in the record to support the nonmoving party's case. *Id.* at 325. If the movant meets its initial burden, then the burden shifts to the non-moving party to go beyond the pleadings and introduce evidence demonstrating a genuine issue for hearing. *Id.* at 324.

III. Analysis

This case arises under the Surface Transportation Assistance Act ("STAA") of 1982, 49 U.S.C. § 31105. To prevail on a complaint under the STAA, a complainant must prove by a preponderance of the evidence:

> that he engaged in protected activity; that his employer was aware of the protected activity; that the employer discharged, disciplined, or discriminated against him regarding his pay, or terms or privileges of

> employment; and that the protected activity was the reason for the adverse action.

Abbs v. Con-way Freight, Inc., ARB No. 08-017, 2010 DOL Ad. Rev. Bd. LEXIS 66*, at 9 (DOL Admin. Rev. Bd. July 27, 2010). The burden shifts to the employer to produce a legitimate, non-discriminatory reason for the adverse action only if the complainant makes a prima facie showing of their case. *Calhoun v. United Parcel Serv.*, ARB No. 00-026, 2002 DOL Ad. Rev. Bd. LEXIS 62*, at 10 (DOL Admin. Rev. Bd. Nov. 27, 2002) (adopting the Title VII burden shifting framework established by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) in STAA cases); *accord Scott v. E.O. Habhegger Co.*, ARB No. 2023-0027, 2024 DOL Ad. Rev. Bd. LEXIS 13*, at 10 (DOL Admin. Rev. Bd. Mar. 14, 2024).

Respondent argues that Complainant has failed to establish that he engaged in protected activity under the STAA. The STAA protects employees who have "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(1)(A)(1). Although the complainant does not have to prove an actual safety violation occurred, they must have a "reasonable belief" that such a safety violation occurred. *Scott*, 2024 DOL Ad. Rev. Bd. LEXIS 13*, at 14 (internal citations and quotations omitted.) Protected activity then has two elements: "(1) the complaint itself must involve a purported violation of a regulation relating to commercial motor vehicle safety, and (2) the complainant's belief must be objectively reasonable." *Guay v. Buford's Tree Surgeons, Inc.*, ARB No. 06-131, 2008 DOL Ad. Rev. Bd. LEXIS 79*, at 13–14 (DOL Admin. Rev. Bd. Jun. 30, 2008); *accord Dick v. J.B. Hunt Transport, Inc.*, ARB No. 10-036, 2011 DOL Ad. Rev. Bd. LEXIS 111*, at 11 (DOL Admin. Rev. Bd. Nov. 16, 2011).

As an initial matter, Complainant has not responded to the Motion for Summary Decision despite being notified of the motion and how to properly respond by the undersigned. (Order Giving Complainant Notice of Summ. Decision, Feb. 28, 2024.) He has not met his burden of responding with specific facts showing there is a material dispute for hearing. *See Menefee v. Tandem Transport Corp. & Lowe's*

Co., ARB No. 09-046, 2010 DOL Ad. Rev. Bd. LEXIS 47*, at 8 (DOL Admin Rev. Bd. Apr. 30, 2010) ("When a motion for summary decision is made, the party opposing the motion may not rest upon mere allegations or denials of such pleading. Rather, the response must set forth specific facts showing that there is a genuine issue of fact for determination at a hearing." (internal citations omitted)). However, because Complainant is a pro se litigant, the undersigned will consider the documents provided as part of the request for hearing at OALJ in addition to the exhibits to Respondent's Motion for Summary Decision when evaluating the motion. *Id.* at 15 (evaluating the pre-hearing submissions of a pro se litigant when the litigant did not include evidence with their response to the motion for summary decision).

Respondent argues that, construing the facts in the light most favorable to Complainant, Complainant does not establish that he engaged in protected activity. The Administrative Review Board and federal courts have found that the substance of the complaints at issue must be covered by a specific and identifiable commercial motor vehicle safety regulation to be considered protected activity under the STAA. *See Evans v. USF Reddaway, Inc.*, 730 Fed. Appx. 566, 567 (9th Cir. 2018) (unpublished) (affirming summary judgment for employer because complaints about dust, gravel, ruts, poor lighting, and lack of security at lots related to general workplace safety and were not specific to commercial motor vehicle safety regulations on hazardous driving conditions or vehicle inspections); *Luckie v. United Parcel Servs.*, ARB No. 05-026, 2007 DOL Ad. Rev. Bd. LEXIS 57*, 30–36 (DOL Admin. Rev. Bd. Jun. 29, 2007) (finding that an employee's safety concerns about a workplace fire were not covered by the STAA); *Worku v. Preflight Parking*, ARB No. 07-028, 2008 DOL Ad. Rev. Bd. LEXIS 53*, 13–14 (DOL Admin. Rev. Bd. Apr. 22, 2008) (finding that an employee could not support his concerns about a broken gear shift with a related safety regulation and affirming summary decision for the employer); *Menefee*, 2010 DOL Ad. Rev. Bd. LEXIS 47*, at 16–18 (finding that the submission from the complainant was too vague and did not point to specific protected conduct and affirming summary decision for the employer).

In his initial complaint to OSHA, Complainant did not refer to any commercial motor vehicle standards, stating only that he was and had been experiencing "severe nuisance" in his vehicles and "unreasonable" noise perpetrated by DHE Terminal employees.[1] In his request to OALJ, Complainant alleged that his claim involved violations of Federal Motor Carrier Safety Regulations Parts 40, 380, 382, 383, 387, 390–397, and 399. (Complainant's Objection to Secretary's Findings and Req. for Hr'g., "Complainant's Obj.".). Complainant's objection and his email to Respondent detailing his complaints to DHE Terminal argue that he reported numerous safety hazards that were allegedly unaddressed.

The majority of his complaints revolved around the noise in the cab of his truck, which he claimed reached a "rare decibel level." (Ex B to Ex 1 to Mot. Summ. Decision.) Complainant says that he reported in early January 2023 "abnormal noises & vibration interior and exterior noise level in power unit has ballooned to an all-time high. Rare decibel level. Defective equipment. I want to be sure it's safe & not bothering or being a burden too anyone's property line while driving in City roads, etc." (*Id.*) According to Complainant, he continued to report noise problems throughout January. In particular, he claims that he reported a tractor that "began making ungodly rare decibel level noise. . . American language coming from tractor is all around VNR Volvo. . . Screaming absurdic remarks" and asked for someone to meet him; that he heard "screaming" from the inside of a tractor cab on at least four occasions; that he experienced "a loud unforeseen scream some about me my ICRA file, my past inside warehouse & inside & outside of truck" that bothered his hearing; that "since May 10-2022 have almost all [vehicles he had driven] had the absurdic scream" and he reported this to his supervisor; that he "reported sexual Harassment & abusive rude comments coming from tractor"; and finally, that he

[1] Complainant's original complaint, and many of the complaints he allegedly made to his employers, involved harassment based on "protected categories like Sexual Orientation & Religion." (Online Compl. Summ., at 2.) He also cited the Civil Rights Act in his appeal to the OALJ. (*Id.*) Claims of this nature are not within the undersigned's jurisdiction.

"sent a video via text of exactly the screaming & bizarre rare noise decibel level that was directed at me" to his supervisor. (*Id.*)

The only relevant regulation listed by Complainant is 49 U.S.C. § 393.94, Interior Noise Levels in Power Units, which constrains the noise level allowed inside the cabs of trucks and truck-tractors. 49 U.S.C. § 393.94. This regulation limits cab noise to 90 dB(A) when measured in accordance with the regulation, with leeway of two dB(A) to account for differences in measurement environment. *Id.* Although Complainant persistently reported loud noises in his cab, he described the majority of these instances as a nuisance or a mental health concern rather than a safety concern. He did not measure the noise in his cab or clarify in the reports whether the noise was generated by the truck or from outside sources. Overall, his noise complaints are too vague to invoke any regulations covered by the STAA.

Even if Complainant established that he had reported a real and specific violation covered by the STAA, he did not have an objectively reasonable belief that this violation was actually occurring. His complaints as a whole appear to allege that the noises coming from the tractor were words and human screaming. Additionally, he alleges in his objection that these noises were the result of "More than ten co-workers and managerial personnel [who] were intentionally causing at least 100 CMV's to make the excessive noises." (Complainant's Obj.) These are objectively unreasonable allegations with no additional evidence or context offered to lend them believability. Based on the record before the undersigned, no fact finder could find that the complaints made by Complainant were objectively reasonable.

The remainder of the complaints made by Complainant do not fall under the STAA and are not objectively reasonable. The "hazards" he reported to DHE Terminal include an "octopus spiderman like man," "a ghost recon invisible like presence," a "white mickey mouse glove coming from Sky & shipping and receiving window," "some sort of portal/circle with octopus like look," and "something ghost like [that] coworkers would command [at him]," among others. (Ex B to Ex 1 to Mot. Summ. Decision.) His later complaints to Respondent included the claim that

DHE Terminals employees were "telepathically" harassing him at his residence. (*Id.*) Although Complainant may have believed he was reporting potential safety hazards, this belief is not objectively reasonable.

Even construing the record in the light most favorable to Complainant, Complainant has not established that he engaged in protected activity or offered any factual evidence to dispute Respondent's motion. Complainant did not specifically identify a violation of a safety regulation of commercial motor vehicles, and he did not have an objectively reasonable belief that commercial motor vehicle safety standards were violated. No reasonable factfinder could find that Complainant's complaints constituted protected activity. He has not established an essential element of his claim, and Respondent is entitled to judgment as a matter of law on the STAA claim.

IV. Conclusion

The undersigned **GRANTS** Respondent's Motion for Summary Decision as to the Surface Transportation Assistance Act claims. To the extent Complainant attempts to bring federal discrimination claims in this forum, the undersigned has no jurisdiction to hear such claims and **DISMISSES without prejudice** any such claims. The undersigned **VACATES** the hearing scheduled on July 31, 2024.

SO ORDERED.

STEWART F. ALFORD
Administrative Law Judge