



In the Matter of:

CARLOS VASQUEZ,

ARB CASE NO. 2017-0066

COMPLAINANT,

ALJ CASE NO. 2016-MAP-00001

v.

DATE: April 16, 2020

**CATERPILLAR LOGISTICS AND
EA STAFFING SERVICES,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Carlos Vasquez; *pro se*; West Lafayette, Indiana

For the Respondents:

**William P. Kealey, Esq.; *Stuart & Branigin LLP*; Lafayette, Indiana;
and Brent I. Clark, Esq.; *Seyfarth Shaw LLP*; Chicago, Illinois**

**Before: Thomas H. Burrell, *Acting Chief Administrative Appeals Judge*, and
Heather C. Leslie and James D. McGinley, *Administrative Appeals Judges***

DECISION AND ORDER

PER CURIAM. The Complainant, Carlos Vasquez, filed a retaliation complaint under the Moving Ahead for Progress in the 21st Century Act (MAP-21), 49 U.S.C. §

30171(a) (2012) and its implementing regulations, 29 C.F.R. Part 1988 (2016). MAP-21 “provides for employee protection from retaliation because the employee has engaged in protected activity pertaining to the manufacture or sale of motor vehicles and motor vehicle equipment.” 29 C.F.R. § 1988.100(a).

Complainant worked as a picker at Respondent, Caterpillar Logistics’ warehouse. Complainant alleged that Respondents, Caterpillar Logistics and EA Staffing Services, violated the MAP-21 whistleblower protection provisions by discharging him on February 18, 2015. Complainant filed his initial complaint of unlawful retaliation with the Department’s Occupational Safety and Health Administration (OSHA) which dismissed the claim as untimely filed.

Complainant appealed the OSHA decision to the Office of Administrative Law Judges (OALJ) which was then docketed on July 6, 2016, and assigned to an Administrative Law Judge (ALJ) on December 7, 2016. A Notice of Hearing and Prehearing Order was issued on February 7, 2017. Before the ALJ, Respondents both filed a motion for summary decision, with Caterpillar Logistics filing on April 12, 2017, and EA Staffing filing its motion for summary decision on April 24, 2017. Respondents argued that they are not motor vehicle manufacturers, part suppliers or dealerships within the meaning of MAP-21 and that Complainant’s safety complaint did not constitute protected activity under MAP-21. EA Staffing further argued that it did not terminate Complainant’s employment; Caterpillar Logistics terminated Complainant. On May 4, 2017, Complainant filed a motion for a sixty-day extension of time to respond to Caterpillar Logistics’ motion. Complainant also requested this extension to gather more evidence and to obtain an attorney. On May 9, 2017, the ALJ denied Complainant’s request for additional time to respond and granted Respondents’ motion for summary decision, having determined Respondents established that there is no material fact in dispute.

On May 19, 2017, Complainant filed for reconsideration of the grant of summary decision. Thereafter, the ALJ held a conference call with the parties on May 31, 2017, and heard Complainant’s allegations that certain parts he worked on were used on vehicles subject to MAP-21. After the conference call, Complainant was given ten days to provide documentation detailing what parts worked on were used for on-road vehicles. On June 12, 2017 Complainant filed documents in

support of his allegations. Respondents replied in opposition. On July 24, 2017, the ALJ issued an Order Denying Complainant's Motion for Reconsideration (Order).

JURISDICTION AND STANDARD OF REVIEW

The Administrative Review Board (ARB or Board) has jurisdiction to review the ALJ's MAP-21 decision pursuant to Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)), 85 Fed. Reg. 13,186 (Mar. 6, 2020). The ARB will affirm the ALJ's factual findings if supported by substantial evidence but reviews all conclusions of law de novo. Summary decision is permitted where "there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law." 29 C.F.R. § 18.72(a) (2018). On summary decision, we review the record on the whole in the light most favorable to the non-moving party. *Micallef v. Harrah's Ricon Casino & Resort*, ARB No. 2016-0095, ALJ No. 2015-SOX-00025, slip op. at 3 (ARB July 5, 2018).

DISCUSSION

An employee alleging employer retaliation in violation of the MAP-21 must demonstrate by a preponderance of the evidence that he engaged in protected activity under MAP-21, that he suffered an adverse action, and that his protected activity was a contributing factor to the adverse action. 49 U.S.C. § 30171(b)(2)(B). Complainant also must prove that Respondents are covered under the MAP-21 whistleblower provisions. Thus, to be covered by MAP-21, Respondents¹ must be motor vehicle manufacturers, parts suppliers, or dealerships.

In the Order, the ALJ summarized the documents submitted by Complainant, including his declaration that he witnessed intermingling of the processing and shipping of materials used for on and off road use, as well as a parts list compiled by the Complainant. In opposition to Complainant's submissions, Respondent Caterpillar Logistics argued that the facility where Complainant was

¹ Complainant on appeal, in arguing that the ALJ's grant of summary judgement was in error, focuses exclusively on Respondent Caterpillar Logistics and does not raise any argument addressing EA Staffing. As Complainant does not point to any error of law regarding EA Staffing, we consider that argument waived.

employed as a picker, shipped materials used exclusively in off-road equipment and generators. In support of its argument, Caterpillar Logistics submitted a Supplemental Declaration of Thomas M. Ropp, operations manager at the facility where Complainant worked, in which he affirmed that the warehouse only shipped parts for off-road equipment and generators. Mr. Ropp also indicated that many of the parts number listed by Complainant were invalid and the ones that were valid were shipped for use for generators and off-highway machines. Mr. Ropp also stated that pickers (Complainant's job) were not trained or informed of the end use of parts shipped from the warehouse.

The ALJ, after taking into consideration the documents and evidence submitted by the parties, concluded that even taking the evidence in a light most favorable to Complainant, he failed to show a genuine question of material fact; that is, Complainant failed to show that the parts distributed at the warehouse were for on-road vehicle usage which would subject Respondents to MAP-21. The ALJ found the Complainant failed to offer any evidence that would show he had personal knowledge of the end use of the parts he worked with, and the mere allegation that the parts would be used on the road, without more, does not raise a genuine issue of material fact. The ALJ concluded that the evidence presented in the case ultimately did not raise a genuine issue of material fact that the facility received, stored, or shipped motor vehicle parts for motor vehicles which would make Respondents subject to MAP-21.

A review of the record supports the ALJ's conclusions. On appeal, Complainant does not identify errors of law or facts in the record before us that would show that the ALJ's findings were wrong. Thus, upon de novo review of the ALJ's conclusion that the Respondent was entitled to summary decision as a matter of law, we hold that it is in accordance with law and consistent with the record before us. 29 C.F.R. § 18.72.

ORDER

Accordingly, we **AFFIRM** the ALJ's Order Granting Motion for Summary Decision.

SO ORDERED.