In the Matter of:

GENE K. CHAPMAN, **ARB CASE NO. 02-030**

COMPLAINANT, **ALJ CASE NO. 2001-STA-35**

v. **DATE: August 28, 2003**

HEARTLAND EXPRESS OF IOWA, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:
Paul O. Taylor, Esq., ***Truckers Justice Center, Eagan, Minnesota***

For the Respondent:
Douglas R. Richmond, Esq., and Michael L. Matula, Esq., ***Armstrong Teasdale LLP, Kansas City, Missouri***

FINAL DECISION AND ORDER

Gene K. Chapman, an employee driver of Heartland Express of Iowa, Inc. (Heartland), filed a complaint alleging that he engaged in activities protected under the Surface Transportation Assistance Act (STAA),[1] and that, in retaliation, Heartland terminated his employment. Following a hearing on Chapman's complaint, a Department of Labor Administrative Law Judge (ALJ) found that Chapman had engaged in protected activity, but that Heartland's Executive Vice-President, Richard Meehan, who made the termination decision, had no knowledge of that activity. The ALJ held that Meehan based his decision solely on information that Chapman shared with him during a meeting they had on August 28, 2000.

[1] 49 U.S.C.A. § 31105 (West 1997) is the employee protection section of the STAA.

The ALJ found that Meehan's testimony regarding the information that Chapman shared with him was credible and gave it determinative weight over Chapman's testimony. Specifically, the ALJ determined that Chapman's general comments about safety regulations during the meeting did not constitute specific complaints relating to violations of a commercial motor vehicle safety regulation, standard, or order. Therefore the ALJ found that these comments were not protected.[2] In addition, the ALJ found that Chapman's specific complaints about his fatigue could not be considered protected activity under the Act because they were not discussed in the context of any alleged violation of Department of Transportation hours of service or other regulation.[3] Ultimately, the ALJ determined that Meehan's decision to terminate Chapman was based solely on Meehan's perception that Chapman could not safely operate a truck.[4]

Thus, the ALJ concluded that Heartland did not discriminate in violation of the STAA. His Recommended Decision and Order of January 8, 2002 denying Chapman's complaint automatically comes to us for review.[5] We are bound by the ALJ's factual findings if those findings are supported by substantial evidence on the record considered as a whole.[6] We review the ALJ's conclusions of law de novo.[7]

The R. D. & O. thoroughly and fairly recites the relevant facts underlying this dispute. In addition, since we did not have the benefit of witnessing the testimony of Meehan and Chapman, we defer to the ALJ's demeanor-based observations about their credibility.[8] We have reviewed

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[2] Recommended Decision and Order (R. D. & O.) at 12.

[3] *Id.* at 12-13.

[4] *Id.* at 14.

[5] *See* 29 C.F.R. § 1978.109(a) (2002). The Secretary of Labor's authority to decide this case has been delegated to the Administrative Review Board. *See* 49 U.S.C.A. § 31105(b)(2)(C) and Secretary's Order 1-2002, 67 Fed Reg. 64272 (Oct. 17, 2002).

[6] 29 C.F.R. § 1978.109(c)(3); *BSP Trans., Inc. v. United States Dep't of Labor,* 160 F.3d 38, 46 (1st Cir. 1998); *Castle Coal & Oil Co. v. Reich,* 55 F.3d 41, 44 (2d Cir. 1995). Substantial evidence is that which is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clean Harbors Envtl. Servs., Inc. v. Herman,* 146 F.3d 12, 21 (1st Cir. 1998) (quoting *Richardson v. Perales,* 402 U.S. 389, 401 (1971)).

[7] *See Roadway Express v. Dole,* 929 F. 2d 1060, 1066 (5th Cir. 1991).

[8] In weighing the testimony of witnesses, the fact-finder considers the relationship of the witnesses to the parties, the witnesses' interest in the outcome of the proceedings, the witnesses' demeanor while testifying, the witnesses' opportunity to observe or acquire knowledge about the

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the entire record and find substantial evidence supports the ALJ's findings of fact.[9] And although the ALJ unnecessarily concluded that Chapman "did not make a prima facie case,"[10] we affirm the recommended decision because the record clearly demonstrates that on August 28, 2000, Meehan's decision to terminate Chapman was not based on any protected activity. Transcript at 31-55. Thus, the ALJ correctly concluded that Heartland did not violate the STAA because Chapman did not prove by a preponderance of evidence the necessary causality element of a STAA whistleblower claim.[11] Therefore, we attach and incorporate the R. D. & O.

Accordingly, we **ADOPT** the ALJ's Recommended Decision and Order and **DENY** Chapman's complaint.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

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subject matter of the witnesses' testimony and the extent to which the testimony was supported or contradicted by other credible evidence. *Cobb v. Anheuser Busch, Inc.*, 793 F. Supp. 1457, 1489 (E.D. Mo. 1990); *Shrout v. Black Clawson Co.*, 689 F. Supp. 774, 775 (S.D. Ohio 1988); *Jenkins v. United States Envtl. Prot. Agency*, ARB No. 98-146, ALJ No. 88-SWD-2, slip op. at 9 (ARB Feb. 28, 2003). The ARB defers to an ALJ's credibility findings that "rest explicitly on an evaluation of the demeanor of witnesses." *Stauffer v. Wal-Mart Stores, Inc.*, ARB No. 00-062, ALJ No. 99-STA-2, slip op. at 9 (ARB July 31, 2001) quoting *NLRB v. Cutting, Inc.*, 701 F.2d 659, 663 (7th Cir. 1983).

[9] We note that the ALJ found that Chapman's comments regarding his fatigue were not protected because they did not relate to a violation of federal regulations. The STAA protects complaints relating to violations of a commercial motor vehicle safety regulation, standard, or order. Thus its protection extends beyond just complaints relating to federal motor vehicle safety regulations. However, Chapman's comments did not relate to any violation of a motor vehicle regulation, standard, or order. Thus the ALJ's finding that none of Chapman's conversation with Meehan constituted protected activity was correct.

[10] R. D. & O. at 15. *See Williams v. Baltimore City Public Schools System*, ARB No. 01-021, ALJ No. 00-CAA-15, n.7 (ARB May 30, 2003). *See also Costa v. Desert Palace, Inc.*, 299 F. 3d 838, 855-856 (9th Cir. 2002).

[11] *See Moon v. Transport Drivers, Inc.*, 836 F. 2d 226, 229 (6th Cir. 1987).