



In the Matter of:

CRAIG CUMMINGS,

ARB CASE NO. 04-043

COMPLAINANT,

ALJ CASE NO. 2003-STA-47

v.

DATE: December 12, 2005

USA TRUCK, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Craig Cummings, pro se, Walnut Shade, Missouri

SECOND ORDER DENYING RECONSIDERATION

Craig Cummings filed a complaint alleging that his employer, USA Truck, Incorporated, violated the employee protection (whistleblower) provisions of the Surface Transportation Assistance Act (STAA or Act) of 1982, as amended and recodified, 49 U.S.C.A. § 31105 (West 1997), when it terminated his employment. After reviewing the record, we determined that the Administrative Law Judge (ALJ) properly held that Cummings failed to allege that he engaged in activity protected by the STAA.¹ Thus, in a Final Decision and Order dated April 26, 2005, we adopted the ALJ's holding, attached

¹ Prior to the scheduled hearing, the ALJ issued a Show Cause Order which required Cummings to show cause why his complaint should not be dismissed for failure to state a cause of action. Ultimately, the ALJ determined that Cummings's allegation was not activity protected by the STAA and, therefore, dismissed the complaint for failure to state a cause of action without holding a hearing.

and incorporated the ALJ's Recommended Order of Dismissal (R. O.), which was issued on January 9, 2004, and dismissed Cummings's complaint.

By letter postmarked May 24, 2005, Cummings submitted additional evidence and raised the same arguments that were considered and rejected by this Board in our original decision. We construed Cummings's filings as a request for reconsideration. Because the evidence presented by Cummings on reconsideration did not alter the record or the ALJ's determination in regard to whether Cummings engaged in protected activity under the STAA and because Cummings again raised the same arguments that were considered and rejected by this Board in our original decision, the Board declined to address them again on reconsideration. Thus, in an Order dated June 30, 2005, the Board denied the request for reconsideration.

By letters postmarked August 11, 2005, August 15, 2005, August 22, 2005, September 1, 2005, and November 8, 2005, Cummings requests reconsideration for the second time, again raising the same arguments that were considered and rejected by this Board in our original decision. Cummings also supplies additional evidence in the form of a letter dated December 12, 2003, from an attorney representing USA Truck indicating that Cummings rejected USA Truck's offer of \$500 to settle this matter and a January 6, 2003 "Decision of Hearing Officer" from the Arkansas Appeal Tribunal denying Cummings's claim for state benefits.

The ARB is authorized to reconsider earlier decisions. *Macktal v. Chao*, 286 F.3d 822, 826 (5th Cir. 2002), *aff'g Macktal v. Brown & Root, Inc.*, ARB Nos. 98-112/122A, ALJ No. 86-ERA-23, slip op. at 2-6 (ARB Nov. 20, 1998). The federal courts reconsider decisions prior to final judgment under limited circumstances, which include: (i) material differences in fact or law from that presented to a court of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the court's decision, (iii) a change in the law after the court's decision, and (iv) failure to consider material facts presented to the court before its decision. *See, e.g., Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995); *Virgin Atl. Airways, Ltd. v. National Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992); *Weinstock v. Wilk*, 2004 WL 367618, at *1 (D. Conn. Feb. 25, 2004); *Motorola, Inc. v. J.B. Rodgers Mech. Contractors, Inc.*, 215 F.R.D. 581, 582-586 (D. Ariz. 2003). In the absence of our own rule, we have adopted the principles of the federal courts for reconsideration.

The evidence that Cummings has now presented on reconsideration does not alter the record or the ALJ's determination in regard to whether Cummings engaged in protected activity under the STAA. In addition, because Cummings again raises the same arguments that were considered and rejected by this Board in our original decision, we will not address them again on reconsideration.²

² Pursuant to 29 C.F.R. § 1978.110(a), "[w]ithin 60 days after the issuance of a final order [of the Board] under § 1978.109, any person adversely affected or aggrieved by such order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the person resided on

Accordingly, the request for reconsideration is **DENIED**.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

the date of the violation.” We note that Missouri, where Cummings resides, is located within the jurisdiction of the United States Court of Appeals for the Eighth Circuit and Cummings was fired when he refused to drive while he was in Ohio, which is located within the jurisdiction of the United States Court of Appeals for the Sixth Circuit.