



**In the Matter of:**

**SHELLEY D. PALMER,**

**ARB CASE NO. 04-141**

**COMPLAINANT,**

**ALJ CASE NO. 2004-STA-45**

**v.**

**DATE: September 27, 2005**

**G.W. LUMBER & MILLWORK, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

*Shelley D. Palmer, pro se, Williston, Vermont*

*For the Respondent:*

*Karl W. Neuse, Esq., Neuse, Smith & Venman, P.C., Middlebury, Vermont*

### **FINAL DECISION AND DISMISSAL ORDER**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982 (STAA).<sup>1</sup> Shelly D. Palmer filed a complaint on January 8, 2004, alleging that G.W. Lumber & Millwork, Inc. terminated his employment in retaliation for engaging in activities protected by the STAA. On May 5, 2004, the Occupational Safety and Health Administration (OSHA) determined that G.W. Lumber & Millwork did not violate the STAA.

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<sup>1</sup> 49 U.S.C.A. § 31105 (West 1997).

Palmer objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).<sup>2</sup> The ALJ conducted a conference call with the parties on June 8, 2004, and scheduled a hearing for August 18, 2004. On June 24, 2004, Palmer filed with the ALJ a motion to withdraw his appeal of OSHA's findings.

The ALJ issued a Recommended Decision and Order (R. D. & O.) on July 7, 2004, noting that under the STAA's interpretive regulations, a party may withdraw his or her objections to the Assistant Secretary of Labor for Occupational Safety and Health's findings "[a]t any time before the findings or order become final . . . by filing a written withdrawal with the administrative law judge."<sup>3</sup> The ALJ recommended that Palmer's request for withdrawal of his objections be granted and this matter dismissed.<sup>4</sup>

The ALJ's decision and the record were forwarded to the Administrative Review Board for automatic review and to issue a final decision.<sup>5</sup> The Board issued a Notice of Review and Briefing Schedule, directing the parties to file briefs in support of or in opposition to the R. D. & O., within thirty days from the date on which the ALJ issued the R. D. & O.<sup>6</sup> Neither party filed a brief.

The Board is required to issue a final decision and order based on the record and the decision and order of the ALJ.<sup>7</sup> Accordingly, we **APPROVE** the R. D. & O. and **DISMISS** Palmer's complaint.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

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<sup>2</sup> See 29 C.F.R. 1978.105 (2004).

<sup>3</sup> R. D. & O. at 1, citing 29 C.F.R. § 1978.111(c).

<sup>4</sup> *Id.*

<sup>5</sup> 29 C.F.R. § 1978.109(a).

<sup>6</sup> See 29 C.F.R. § 1978.109(c)(2).

<sup>7</sup> 29 C.F.R. § 1978.109(c)(1).