



In the Matter of:

RANDY J. PARDIS,¹

ARB CASE NO. 05-103

COMPLAINANT,

ALJ CASE NO. 05-STA-17

v.

DATE: March 27, 2006

B&I AUTO SUPPLY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND DISMISSAL ORDER

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C.A. § 31105 (West 1997). The Occupational Safety and Health Administration (OSHA) investigated a complaint by Randy Pardis that the Respondent, B&I Auto Supply, had discriminated against him in violation of the STAA's whistleblower protection provisions. On January 4, 2005, OSHA issued an Assistant Secretary's Findings and Order finding that Pardis was not a covered employee under the STAA because the vehicle Pardis drove did not meet the gross weight test for a commercial motor vehicle under the STAA. *See* 49 U.S.C.A. § 31101(1)(A). The Findings did not discuss whether the use of the vehicle to transport battery acid, a potentially hazardous material, might qualify the vehicle as a commercial motor vehicle under one of the STAA's alternate definitions. *See* 49 U.S.C.A. § 31101(1)(C). Pardis requested a hearing before a Department of Labor Administrative Law Judge (ALJ), as permitted by 29 C.F.R. § 1978.105 (2005).

¹ The caption is corrected to reflect the Complainant's proper name and spelling. *See* Complainant's Request for Hearing, dated Jan. 28, 2005; Complainant's Withdrawal of Objections, received May 31, 2005.

On May 31, 2005, prior to the hearing date, the ALJ received a letter from Pardis stating: “My intentions are to drop this case.” Under the STAA’s implementing regulations a party may withdraw his objections to OSHA findings “[a]t any time before the findings or order become final . . . by filing a written withdrawal with the administrative law judge.” 29 C.F.R. § 1978.111(c). Construing the May 31, 2005 letter to indicate that Pardis desired to withdraw his objections to the Assistant Secretary’s Findings and Order, on June 2, 2005, the ALJ issued a Recommended Order Approving Withdrawal of Objections and Dismissing Claim (R. O.).

The ALJ’s decision and the record were forwarded to the Administrative Review Board for automatic review and a final decision. *See* 29 C.F.R. § 1978.109(a). On June 9, 2005, the Board issued a Notice of Review and Briefing Schedule informing the parties that any party that desired to file a brief with the Board in support of or opposition to the R. O. should do so by July 5, 2005. The Board also asked any party that decided not to file a brief to so inform the Board. Neither party filed a response to the Board’s notice.

The Board is required to issue a final decision and order based on the record and the ALJ’s decision and order of June 2, 2005. *See* 29 C.F.R. § 1978.109(c)(1). Accordingly, the Board has reviewed the record and the R. O. Finding the R. O. to be supported by substantial evidence and in accordance with law,² we **APPROVE** the withdrawal of objections by Pardis and **AFFIRM** the ALJ’s R. O.

SO ORDERED.

A. LOUISE OLIVER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

² We review the ALJ’s findings of fact under the substantial evidence standard. 29 C.F.R. § 1978.109(c)(3). In reviewing the ALJ’s legal conclusions, the Board, as the Secretary’s designee, acts with “all the powers [the Secretary] would have in making the initial decision....” 5 U.S.C.A. § 557(b) (West 1996). The Board therefore reviews the ALJ’s legal conclusions de novo. *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).