



**In the Matter of:**

**MARTIN REEVES,**

**ARB CASE NO. 05-128**

**COMPLAINANT,**

**ALJ CASE NO. 2005-STA-034**

**v.**

**DATE: September 28, 2007**

**OLD DOMINION FREIGHT LINE,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearance:**

***For the Complainant:***

**Henry Egghart, Esq., Reno, Nevada**

**FINAL DECISION AND ORDER**

This case arises under the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and recodified, 49 U.S.C.A. § 31105 (West 1997).<sup>1</sup> Section 31105 provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would violate those rules. On July 15, 2005, the Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) in which she recommended dismissal of Reeves's complaint. The issue before the Board is whether the ALJ properly determined that the limitations period for filing Reeves's STAA complaint was not tolled while an internal grievance proceeding was pending, nor by incapacity due to therapy Reeves received for treatment of Hepatitis C.

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<sup>1</sup> The STAA has been amended since Reeves filed his complaint. *See* Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). Even if the amendments were applicable to this complaint, they would not affect our decision.

For the following reasons we accept the ALJ's recommended decision and dismiss Reeves's complaint.

### **BACKGROUND**

The Respondent, Old Dominion Freight Line, employed the Petitioner, Martin Reeves, as a truck driver. On July 19, 2004, Old Dominion terminated Reeves's employment, and in August 2004, Reeves challenged this termination through an internal appeal process that Old Dominion provided to its employees.<sup>2</sup> On September 27, 2004, Old Dominion denied his internal appeal. Reeves filed his STAA complaint on March 24, 2005, 248 days after Old Dominion terminated his employment.<sup>3</sup>

The Occupational Safety and Health Administration concluded that Reeves did not timely file his STAA complaint. Reeves requested a hearing before an Administrative Law Judge (ALJ). The ALJ issued a Notice of Trial and Pretrial Order (Order). In response to the Order, Reeves requested that the hearing be postponed pending resolution of the timeliness issue.

Reeves argued that the limitations period governing his STAA complaint should be tolled for two reasons. First, he contended that the limitations period did not begin to run until September 27, 2004, the date upon which Old Dominion denied his internal appeal.

Second, he argued that during the filing period, he had been receiving medical therapy for Hepatitis C, which rendered him "incapacitated due to ... the chemotherapy used to treat it."<sup>4</sup> In support of this contention, he submitted a letter from Trish Hernandez, a doctor of pharmacology, indicating that the therapy may cause him to experience "severe fatigue, mood swings, and flu like symptoms."<sup>5</sup> He contended that the therapy made it "very difficult to work, go to appointments, and stay on top of all the legal things that needed to be done as a result of [his] Temporary Termination by Old Dominion on July 19, 2004."<sup>6</sup>

On July 15, 2005, the ALJ issued an R. D. & O. in which she concluded that Reeves failed to show that the doctrine of equitable tolling was applicable to his untimely complaint. The case is now before the Administrative Review Board (Board) pursuant to

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<sup>2</sup> Complainant's Exhibit (CX) 3.

<sup>3</sup> R. D. & O. at 2.

<sup>4</sup> Complainant's Brief Before the ALJ at 3.

<sup>5</sup> CX 4.

<sup>6</sup> ALJ's Exhibit 3 at 1.

the automatic review provisions of 49 U.S.C.A. § 31105(b)(2)(C) and 29 C.F.R. § 1978.109(c)(1)(2007).

### JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction to decide this matter by authority of 49 U.S.C.A. § 31105(b)(2)(C) and 29 C.F.R. § 1978.109(c). Under the STAA, the Board is bound by the ALJ's factual findings if substantial evidence on the record considered as a whole supports those findings.<sup>7</sup> 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."<sup>8</sup> In reviewing the ALJ's conclusions of law, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making the initial decision . . . ."<sup>9</sup> Therefore, the Board reviews the ALJ's conclusions of law de novo.<sup>10</sup>

### DISCUSSION

Employees alleging employer retaliation in violation of the STAA must file their complaints with OSHA within 180 days after the alleged violation occurred.<sup>11</sup> Reeves's complaint is therefore untimely. However, the STAA limitations period is not jurisdictional and therefore is subject to equitable tolling.<sup>12</sup>

In determining whether equitable principles require the tolling of a statute of limitations in certain whistleblower cases, the Board has been guided by the discussion of equitable tolling of statutory time limits in *School Dist. of Allentown v. Marshall*, 657 F.2d 16, 19-21 (3d Cir. 1981). In that case, which arose under the whistleblower provisions of the Toxic Substances Control Act, 15 U.S.C.A. § 2622 (West 2004), the court articulated three principal situations in which equitable tolling may apply: when

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<sup>7</sup> 29 C.F.R. § 1978.109(c)(3); *BSP Transp., Inc. v. U.S. Dep't of Labor*, 160 F.3d 38, 46 (1st Cir. 1998); *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d 41, 44 (2d Cir. 1995).

<sup>8</sup> *Clean Harbors Envtl. Servs. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

<sup>9</sup> 5 U.S.C.A. § 557(b) (West 1996). See also 29 C.F.R. § 1978.109(b).

<sup>10</sup> *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

<sup>11</sup> 49 U.S.C.A. § 31105(b)(1).

<sup>12</sup> See, e.g., *Hillis v. Knochel Bros.*, ARB Nos. 03-136, 04-081, 04-148; ALJ No. 02-STA-050, slip op. at 3 (ARB Oct. 19, 2004).

the defendant has actively misled the plaintiff regarding the cause of action; when the plaintiff has in some extraordinary way been prevented from filing his action; and when “the plaintiff has raised the precise statutory claim in issue but has done so in the wrong forum.”<sup>13</sup>

Reeves argues that, because he appealed his termination through Old Dominion’s internal appeal process, the filing period for his STAA complaint did not begin to run until September 27, 2004, the date upon which the committee responsible for deciding his internal appeal rendered a decision.<sup>14</sup> We disagree. The plain language of the STAA precludes tolling of the limitations period during the pendency of Reeves’s internal appeal of his termination.<sup>15</sup> We therefore concur with the ALJ’s conclusion that the limitations period began to run on July 19, 2004, the date Old Dominion discharged Reeves.

We also conclude that Reeves’s contention that he was “incapacitated” due to his treatment for Hepatitis C does not entitle him to equitable tolling. Reeves’s assertion that he was incapacitated, and the fact that he was under a doctor’s care, does not establish that his medical condition was so severe that it prevented him from pursuing his STAA complaint in a timely manner.<sup>16</sup>

This Board has held that incapacity, specifically “mental” incapacity, may entitle a complainant to equitable tolling “if the illness in fact prevents the sufferer from managing his affairs and thus from understanding his legal rights and acting upon them.”<sup>17</sup> Reeves’s contention that it was “difficult” for him to “stay on top of all the legal

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<sup>13</sup> *Allentown*, 657 F.2d at 20 (internal quotations omitted).

<sup>14</sup> Complainant’s Brief at 3.

<sup>15</sup> See 29 C.F.R. § 1978.102(d)(3) (“The pendency of grievance-arbitration proceedings or filing with another agency are examples of circumstances which do not justify a tolling of the 180-day period.”).

<sup>16</sup> See, e.g., *Foley v. Boston Edison Co.*, ARB No. 99-022, ALJ No. 97-ERA-056, slip op. at 4 (ARB Jan. 31, 2001) (“Although Foley has submitted letters showing that he was under a doctor’s care, his doctor does not state or even suggest that Foley’s illness was so debilitating that it prevented him from either understanding his legal rights or acting upon them.”); *Ellis v. Ray A. Schoppert Trucking*, 92-STA-028, slip op. at 1-2 (Sec’y Sept. 23, 1992) (complainant not entitled to equitable tolling despite suffering extreme duress, spinal stenosis, a collapsed disc, spinal obstruction, and severe memory loss).

<sup>17</sup> See *Hall v. E G & G Def. Materials, Inc.*, ARB No. 98-076, ALJ No. 97-SDW-009, slip op. at 3 (ARB Sept. 30, 1998), *aff’d sub nom.*, *Hall v. U.S. Dep’t of Labor*, 198 F.3d 257 (10th Cir. 1999). In *Hall* we also acknowledged the stricter standard applied by some courts under which physical and mental incapacity are not grounds for tolling unless a complainant

things that needed to be done as a result of” the termination of his employment does not indicate that he was in fact prevented from managing his legal affairs. To the contrary, Reeves was able to pursue his internal complaint with Old Dominion during the STAA limitations period. We therefore reject his request “for equitable tolling of the running of the filing period due to his lack of capacity to file earlier due to illness.”<sup>18</sup>

For the reasons above, we conclude that Reeves’s complaint was untimely filed and that the doctrine of equitable estoppel does not apply. Accordingly, we **DISMISS** Reeves’s complaint.

**SO ORDERED.**

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

**DAVID G. DYE**  
**Administrative Appeals Judge**

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“has been adjudged mentally incompetent or was institutionalized during the filing period.”  
*See Hall*, ARB No. 98-076, slip op. at 3.

<sup>18</sup> Complainant’s Brief at 4.