



In the Matter of:

DANIEL DAVIS,

ARB CASE NO. 05-152

COMPLAINANT,

ALJ CASE NO. 2005-STA-42

v.

DATE: September 27, 2005

FONDA KAYE, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

This case arose when the Complainant, Daniel Davis, filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that the Respondent, Fonda Kaye, Inc., terminated his employment in violation of the Surface Transportation Assistance Act's whistleblower protection provision.¹ Upon investigation,² the OSHA Area Director concluded that Fonda Kaye had not violated the STAA. Davis filed a timely request for a hearing before a Labor Department Administrative Law Judge (ALJ).³

Before the hearing commenced, Davis made a written request to the ALJ to withdraw his complaint against Fonda Kaye. The ALJ treated Davis' request to withdraw his complaint as a request to withdraw his objections to the Area Director's findings.⁴ The STAA's implementing regulations permit a party to withdraw objections to the

¹ 49 U.S.C.A. § 31105 (West 1997) (STAA).

² 29 C.F.R. § 1978.103 (2004).

³ 29 C.F.R. § 1978.105(a).

⁴ [Recommended] Decision and Order Dismissing Request for Hearing (R. D. & O.) at 2.

Secretary's preliminary findings or preliminary order prior to the date on which the findings or order become final.⁵ If a party withdraws the objections pursuant to this regulation, "[t]he judge or the Administrative Review Board, United States Department of Labor, as the case may be, shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn."⁶ Accordingly, the ALJ granted Davis' withdrawal of his request for a hearing, reinstated the Area Director's finding that Fonda Kaye's termination of Davis' employment did not violate the STAA's whistleblower protection provision and denied his complaint.⁷

The ALJ's R. D. & O. is subject to the STAA's automatic review provisions.⁸ The Secretary of Labor has delegated her jurisdiction to decide this matter to the Administrative Review Board.⁹ By Order dated September 19, 2005, the Board notified the parties of their right to file a brief opposing or supporting the ALJ's R. D. & O.¹⁰ Davis responded that he did not intend to file a brief. Fonda Kaye did not respond to the Board's order.

We review the ALJ's findings of fact under the substantial evidence standard.¹¹ 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. . . ."¹² Therefore, the Board reviews the ALJ's legal conclusions de novo.¹³

⁵ 29 C.F.R. § 1978.111(c).

⁶ *Id.*

⁷ R. D. & O. at 1.

⁸ 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1). *Accord Sabin v. Yellow Freight Sys. Inc.*, ARB No. 04-032, ALJ No. 03-STA-5, slip op. at 6 (ARB July 29, 2005); *Elliott v. Chris Truck Line*, ARB No. 04-132, ALJ No. 02-STA-43, slip op. at 2 (ARB Jan. 28, 2005); *Hardy v. Envil. Restoration, Inc.*, ARB No. 05-019, ALJ No. 04-STA-020, slip op. at 2 (ARB Jan. 11, 2005); *Ass't Sec'y and Boyd v. Palmentere Cartage Serv. Inc.*, ARB No. 04-135, ALJ No. 03-STA-40, slip op. at 1 (ARB Oct. 27, 2004).

⁹ Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64272 (Oct. 17, 2002); 29 C.F.R. § 24.8(a)(2004).

¹⁰ See 29 C.F.R. § 1978.109(a).

¹¹ 29 C.F.R. § 1978.109(c)(3).

¹² 5 U.S.C.A. § 557(b) (West 1996).

¹³ See *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

Because Davis withdrew his request for a hearing prior to development of a factual record, we have no occasion to apply the substantial evidence standard of review in this case. The ALJ's determination that Davis' request could be granted and the Area Director's finding be reinstated pursuant to 29 C.F.R. § 1978.111(c) is correct as a matter of law.¹⁴ Accordingly, we **APPROVE** Davis' withdrawal of objections and **AFFIRM** the ALJ's R. D. & O.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

¹⁴ See *Wallace v. R. & L. Carriers*, ARB No. 04-098, ALJ No. 2002-STA-40 (ARB Aug. 30, 2005).