



In the Matter of:

FERNANDO DEMECO WHITE,
COMPLAINANT,

ARB CASE NO. 07-035

ALJ CASE NO. 2006-STA-048

v.

DATE: March 30, 2009

**GRESH TRANSPORT, INC.,
FEDERAL FREIGHT SYSTEMS, INC.,
AND UNITED FREIGHT, INC.,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD:

Appearances:

For the Complainant:

Paul Taylor, Esq., *Truckers Justice Center*, Burnsville, Minnesota

ORDER DENYING RECONSIDERATION

Fernando Demeco White filed a complaint alleging that Gresh Transport, Inc.; Federal Freight Systems, Inc.; and United Freight, Inc. (Respondents) violated the employee protection provision of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C.A. § 31105 (West 2008), by discharging him from employment on January 29, 2006. In his complaint, White sought both monetary damages and reinstatement.

In July 2006, White reopened a bankruptcy case he had filed in 2005. The Respondents moved for summary decision on the instant STAA complaint on the ground that he failed to disclose it as an asset to the bankruptcy court. The Board concluded that White was obligated to amend his filing with the bankruptcy court if his financial circumstances changed after submission of his initial bankruptcy petition. *White v. Gresh*

Transp. Inc., ARB No. 07-035, ALJ No. 2006-STA-048, slip op. at 3-4 (ARB Nov. 20, 2008) (Order of Remand). We held that, because he failed to disclose the instant STAA complaint as an asset of his bankruptcy estate, application of the doctrine of judicial estoppel precluded White from recovering monetary damages on this STAA claim. *Id.* at 4-5. However, the Board also determined that judicial estoppel did not preclude reinstatement to his employment with the Respondents, and therefore remanded the case to the ALJ to determine whether White was entitled to that remedy.

On December 30, 2008, White submitted a Motion to Reconsider Order of Remand as to Application of Doctrine of Judicial Estoppel (Motion), requesting the Board to reconsider our Order of Remand. The ARB will reconsider a prior decision under limited circumstances. Those include: (i) material differences in fact or law from that presented to the Board of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the Board's decision, (iii) a change in the law after the Board's decision, and (iv) failure to consider material facts presented to the Board before its decision. *Knox v. U.S. Dep't of Interior*, ARB No. 03-040, ALJ No. 2001-CAA-003, slip op. at 2 (ARB Oct. 24, 2005). We do not grant reconsideration on motions that merely repeat arguments made on appeal. *McCloskey v. Ameriquest Mortgage Co.*, ARB No. 06-033, ALJ No. 2005-SOX-093, slip op. at 3 (ARB Mar. 26, 2008).

White has not demonstrated that any of the provisions of the Board's four-part test apply. In moving for reconsideration, White presents no new matters of law or fact, but instead repeats his previous argument that he is entitled to monetary damages because the STAA claim that is the subject of this case is not a part of his bankruptcy estate. Motion at 2-5. We considered, but rejected, that argument when we held that his failure to disclose that STAA complaint in the bankruptcy action estopped his claim for money damages. Order of Remand at 5. Accordingly, White's Motion for Reconsideration is **DENIED**.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge