



In the Matter of:

CARL B. BEDWELL, SR.,

ARB CASE NO. 07-038

COMPLAINANT,

ALJ CASE NO. 2007-STA-006

v.

DATE: October 31, 2007

SPIRIT-MILLER NE, LLC,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

This case arises under the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, 49 U.S.C.A. § 31105 (West 2007).¹ 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 December 27, 2006, the Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) in which he recommended dismissal of Bedwell's complaint. We affirm.

BACKGROUND

Bedwell began working as a truck driver for Spirit-Miller on September 21, 2005. On October 31, 2006, Bedwell contacted the Occupational Safety and Health Administration (OSHA) to file a STAA complaint. He informed OSHA that he "stopped working with [Spirit-Miller] as of December 31, 2005 [because] he was disqualified from

¹ The STAA has been amended since Bedwell 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.

driving at the end of December because he complained about not having insurance.”² OSHA dismissed the complaint on December 1, 2006, because it was untimely.

Bedwell requested a formal hearing before an ALJ. On December 14, 2006, the ALJ issued an Order to Show Cause requiring Bedwell to show cause why his complaint should not be dismissed as untimely. In response to the Order, Bedwell submitted a letter describing actions taken by Spirit-Miller and Mamo Transportation, Inc. that he contends violate the STAA. He also submitted copies of a “Charge of Discrimination” against Mamo Transportation dated April 7, 2005, and a “Charge of Discrimination” against Spirit-Miller dated May 12, 2006. Bedwell had filed these charges with the Equal Employment Opportunity Commission (EEOC).³

On December 27, 2006, the ALJ issued an R. D. & O. in which he concluded that the doctrine of equitable tolling was inapplicable to Bedwell’s untimely complaint. The case is now before the Administrative Review Board pursuant to 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

By authority of 49 U.S.C.A. § 31105(b)(2)(C), the Secretary of Labor has delegated her jurisdiction to decide this matter to the Administrative Review Board (ARB). *See* Secretary’s Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002). *See also* 29 C.F.R. § 1978.109(c).

In reviewing the ALJ’s conclusions of law, the ARB, as the Secretary of Labor’s designee, acts with “all the powers [the Secretary] would have in making the initial decision” 5 U.S.C.A. § 557(b) (West 2004). Therefore, we review the ALJ’s conclusions of law de novo. *Monde v. Roadway Express, Inc.*, ARB No. 02-071, ALJ Nos. 2001-STA-022, 029, slip op. at 2 (ARB Oct. 31, 2003).

DISCUSSION

The STAA provides that an employer may not “discharge,” “discipline,” or “discriminate” against an employee-operator of a commercial motor vehicle “regarding pay, terms, or privileges of employment” because the employee has engaged in certain

² R. D. & O. at 1, citing ALJ Exhibit (ALJX) 1.

³ Bedwell’s EEOC charge against Spirit-Miller states: “I believe I have been discriminated against because of my age (69) (09/05/36) in violation of the Age Discrimination in Employment Act and also in retaliation for having filed a charge against another trucking company.” ALJX 2. The other trucking company is presumably Mamo Transportation.

protected activities.⁴ Employees alleging employer retaliation in violation of the STAA must file their complaints within 180 days after the alleged violation occurred.⁵

The STAA's implementing regulations provide that complaints must be filed with OSHA, but no particular form of complaint is required.⁶ The STAA limitations period is not jurisdictional and therefore is subject to equitable tolling.⁷

Because a major purpose of the 180-day period is to allow the Secretary to decline to entertain complaints that have become stale, complaints not filed within 180 days of an alleged violation will ordinarily be considered untimely.⁸ The regulation provides for extenuating circumstances that will justify tolling of the 180-day period, such as when the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action or when the discrimination is in the nature of a continuing violation.⁹ However, the filing of a complaint seeking remedies other than those available under the STAA with another agency does not justify tolling of the 180-day period.¹⁰

The alleged STAA violation in this case occurred on December 31, 2005,¹¹ when Spirit-Miller informed Bedwell that he was disqualified from driving for the company.

⁴ 49 U.S.C.A. § 31105(a)(1).

⁵ 49 U.S.C.A. § 31105(b)(1).

⁶ 29 C.F.R. § 1978.102(b); *see, e.g., Harrison v. Roadway Express, Inc.*, ARB No. 00-048, ALJ No. 1999-STA-037 (Dec. 31, 2002)(although the complainant did not file a written complaint with OSHA, he nevertheless filed a timely complainant when he visited the OSHA office in person to file a complaint, the OSHA representative memorialized his complaint in written notes and entered identifying information in a logbook, and the notes the OSHA representative took along with other records at the office sufficiently identified the essential nature of the complaint and the identity of the parties). *See also Farrar v. Roadway Express*, ARB No. 06-003, ALJ No. 2005-STA-046, slip op. at 8 (ARB Apr. 25, 2007).

⁷ *See, e.g., Miller v. Basic Drilling Co.*, ARB No. 05-111, ALJ No. 2005-STA-020, slip op. at 3 (ARB Aug. 30, 2007).

⁸ 29 C.F.R. § 1978.102(d)(2).

⁹ 29 C.F.R. § 1978.102(d)(3).

¹⁰ *Id.* *See also Hillis v. Knochel Bros., Inc.*, ARB Nos. 03-136, 04-081, 04-148, ALJ No. 2002-STA-050, slip op. at 4-7 (ARB Mar. 31, 2006).

¹¹ December 31, 2005 is the date Bedwell provided to OSHA as the date Spirit-Miller disqualified him as a driver. R. D. & O. at 1. Bedwell's EEOC Charge of Discrimination against Spirit-Miller states that he was disqualified from his employment on January 1, 2006. This later date would not render his STAA complaint timely.

Bedwell filed his complaint on October 31, 2006, more than 180 days after the alleged violation. Accordingly, Bedwell's complaint is untimely. We must therefore determine whether Bedwell is entitled to equitable tolling of the filing period.

As a general matter, in determining whether equity requires the tolling of a statute of limitations, the ARB is guided by the principles that courts have applied to cases with statutorily-mandated filing deadlines.¹² Accordingly, the Board has recognized three situations in which tolling is proper:

- (1) [when] the respondent has actively misled the complainant respecting the cause of action,
- (2) the complainant has in some extraordinary way been prevented from asserting his rights, or
- (3) the complainant has raised the precise statutory claim in issue but has mistakenly done so in the wrong forum.¹³

When seeking equitable tolling of a statute of limitations, the complainant bears the burden of demonstrating the existence of circumstances supporting tolling.¹⁴ The complainant must prove that he mistakenly filed the precise statutory claim in issue in the wrong forum, but within the filing period.¹⁵

In *Hillis v. Knochel Bros., Inc.*, ARB Nos. 03-136, 04-081, 04-148, ALJ No. 2002-STA-050, slip op. at 6 (ARB Mar. 31, 2006),¹⁶ we explained that, with respect to raising a claim in the wrong forum, the phrase "filing with another agency" in section

¹² *Howell v. PPL Servs., Inc.*, ARB No. 05-094, ALJ No. 2005-ERA-014, slip op. at 4 (Feb. 28, 2007).

¹³ *School Dist. of Allentown v. Marshall*, 657 F.2d 16, 19-21 (3d Cir. 1981) (citations omitted).

¹⁴ *Herchak v. America W. Airlines, Inc.*, ARB No. 03-057, ALJ No. 2002-AIR-012, slip op. at 5 (ARB May 14, 2003), citing *Wilson v. Sec'y, Dep't of Veterans Affairs*, 65 F.3d 402, 404 (5th Cir. 1995) (complaining party in Title VII case bears burden of establishing entitlement to equitable tolling).

¹⁵ *Immanuel v. Wyoming Concrete Indus., Inc.*, ARB No. 96-022, ALJ No. 1995-WPC-003, slip op. at 3 (ARB May 28, 1997).

¹⁶ In concluding that Bedwell was not entitled to equitable tolling, the ALJ cited a ruling we made in the *Hillis v. Knochel Brother* case in 2004. R. D. & O. at 3 ("The Administrative Review Board has clearly held that making a complaint in the wrong forum does not toll the STAA's statute of limitations."). Our ruling in that case was modified by *Hillis v. Knochel Bros., Inc.*, ARB Nos. 03-136, 04-081, 04-148, ALJ No. 2002-STA-50, slip op. at 6 (ARB Mar. 31, 2006), which we rely upon in deciding this case.

1978.102(d)(3) refers to complaints filed “regarding the same general subject with another agency,” i.e., the pursuit of alternative remedies with agencies having jurisdiction to award relief under statutes other than the STAA.”¹⁷ The ARB thus held that the regulation’s reference to “filing with another agency” did not preclude equitable tolling when a complainant has filed a STAA complaint in the wrong forum.¹⁸

Bedwell’s May 12, 2006 EEOC Charge of Discrimination does not constitute a complaint alleging that his employer violated the STAA. It constitutes the pursuit of an alternative remedy with an agency having jurisdiction to award relief under statutes other than the STAA.¹⁹ It therefore does not justify a tolling of the STAA’s 180-day filing period.

Bedwell has not presented any other argument for tolling the limitations period governing his claim. We therefore conclude that the doctrine of equitable tolling does not apply to his untimely complaint. Accordingly, we **DISMISS** his complaint.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

DAVID G. DYE
Administrative Appeals Judge

¹⁷ *Hillis*, slip op. at 6.

¹⁸ *Id.* slip op. at 7.

¹⁹ We concur with the ALJ’s conclusion that “[t]he EEOC charge against Mamo Transportation filed on April 7, 2005 was filed before Complainant was discharged by Respondent and is irrelevant to the instant case.” R. D. & O. at 2.