



**In the Matter of:**

**JOEL KING,**

**ARB CASE NO. 07-062**

**COMPLAINANT,**

**ALJ CASE NO. 2007-STA-055**

**v.**

**DATE: August 27, 2007**

**U-HAUL COMPANY OF NEVADA,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Respondent:*

*Anderson B. Scott, Fisher & Scott LLP, Atlanta, Georgia*

**FINAL DECISION AND ORDER GRANTING COMPLAINANT'S REQUEST TO  
WITHDRAW HIS OBJECTIONS TO OSHA'S FINDINGS**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982 (STAA).<sup>1</sup> The Complainant, Joel King

---

<sup>1</sup> 49 U.S.C.A. § 31105 (Thompson/West 2007). Pursuant to the STAA's whistleblower provision, a person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because:

- (A)(i) the employee, or another person at the employee's request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order, or has testified or will testify in such a proceeding; or
- (ii) the person perceives that the employee has filed or is about to file a complaint or has begun or is about to begin a

(King), filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that his employer, the Respondent, U-Haul Company of Nevada, fired him in retaliation for complaining about alleged violations of truck safety regulations. OSHA found that the complaint was untimely filed and denied it in August 2004. King objected and requested a hearing by a Department of Labor Administrative Law Judge.<sup>2</sup>

On September 10, 2004, the Administrative Law Judge (ALJ) to whom the case had been assigned issued a Notice of Trial. The ALJ set the hearing for September 24, 2004, and ordered the parties to start the discovery process. Five days later, the ALJ issued an Order to Show Cause why King's STAA complaint should be considered timely filed. Both parties responded to the Show Cause Order. The ALJ ruled in January 2005 that King's STAA complaint was timely filed. The case was later reassigned to another ALJ. The parties subsequently jointly requested that the hearing be continued until a related matter before the National Labor Relations Board (NLRB) was resolved. The ALJ granted the parties' request for a stay. The NLRB matter was resolved in September 2005.

In October 2005, the parties entered into settlement discussions. In November 2005 however, the Respondent sought dismissal of King's STAA complaint, alleging estoppel and King's lack of standing. King opposed the motion and filed a counter-motion for a stay pending bankruptcy court proceedings he had previously initiated. The Respondent opposed King's counter-motion. The ALJ denied the Respondent's motion for dismissal and granted King's motion for a stay pending the answer to an inquiry the ALJ ordered King to make to the bankruptcy trustee.

In May 2006, King filed a Motion for Summary Judgment or Preliminary Reinstatement. In June 2006, the parties filed a Stipulation for Stay to Participate in Mediation. The Chief Administrative Law Judge appointed a settlement judge, but the case did not settle. The Respondent, in August 2006, filed a response to King's pending

---

proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order;  
(B) the employee refuses to operate a vehicle because –  
(i) the operation violates a regulation, standard, or order of the United States related to the commercial motor vehicle safety, health, or security; or  
(ii) the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle's hazardous safety or security condition.

49 U.S.C.A. § 31105 (A), (B).

<sup>2</sup> See 29 C.F.R. § 1978.105(a) (2006).

Motion. In September 2006, King withdrew that Motion and requested that the hearing be held promptly. The ALJ issued a Notice of Trial, scheduling the hearing for January 2007.

Prior to the hearing, the parties filed both a Stipulation of Dismissal with Prejudice and a Consent Withdrawal of Objections. In the Stipulation of Dismissal with Prejudice, the parties stipulated to the “dismissal with prejudice of all claims brought by the Complainant in this proceeding, with each party to bear his or her own costs and attorney’s fees.” In the Consent Withdrawal of Objections, King withdrew his objections to OSHA’s findings in denying his STAA complaint. King also requested that the matter become final and not subject to judicial review. The Respondent consented to both King’s withdrawal of his objections to OSHA’s denial of his complaint and to King’s request that the matter become final and not subject to judicial review.

On November 16, 2006, the ALJ issued a Recommended Order Approving Withdrawal of Objections and Dismissing Claim. The ALJ noted King’s withdrawal under 29 C.F.R. § 1978.111(c) of his objections to OSHA’s findings in denying his complaint. The ALJ reinstated those findings and indicated that they became the Secretary of Labor’s final decision in this matter. The ALJ next addressed the parties’ stipulation of Dismissal with Prejudice. Finding no evidence of any settlement agreement, the ALJ recommended that the matter be dismissed with prejudice, with each party bearing its own fees and costs.

The case is now before the Administrative Review Board pursuant to the STAA’s automatic review provisions.<sup>3</sup> The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.<sup>4</sup> When reviewing STAA cases, the ARB is bound by the ALJ’s factual findings if those findings are supported by substantial evidence in the record considered as a whole.<sup>5</sup> 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 . . . .”<sup>6</sup> Therefore, the Board reviews the ALJ’s legal conclusions de novo.<sup>7</sup>

---

<sup>3</sup> See 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1).

<sup>4</sup> Secretary’s Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

<sup>5</sup> 29 C.F.R. § 1978.109(c)(3); *BSP Trans, 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>6</sup> 5 U.S.C.A. § 557(b) (West 1996).

<sup>7</sup> See *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

The Board issued a Notice of Review and Briefing Schedule reminding the parties of their right to file briefs with the Board in support of or in opposition to the ALJ's recommended order within thirty days of the date on which the ALJ issued it.<sup>8</sup> The Respondent has filed a response urging the Board to affirm the ALJ's recommended order dismissing King's STAA claim because the parties jointly requested its dismissal with prejudice and the Respondent consented to King's withdrawal of his objections to OSHA's denial of his complaint.

The ALJ's recommended order complies with applicable STAA statutory and regulatory provisions. The STAA's implementing regulation at 29 C.F.R. § 1978.111(c) provides:

At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Administrative Review Board, United States Department of Labor. The 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.<sup>9</sup>

Consistent with 29 C.F.R. § 1978.111(c), the ALJ (1) recommended that King's claim be dismissed based on his withdrawal of his objections to OSHA's denial of his STAA complaint, and (2) reinstated those findings denying his complaint. The Respondent consented to King's withdrawal of his objections to OSHA's findings and the parties stipulated to the dismissal with prejudice of King's claim.

Accordingly, we **GRANT** King's request to withdraw his objections to OSHA's findings and **AFFIRM** those findings denying his complaint as provided in 29 C.F.R. § 1978.111(c).

**SO ORDERED.**

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

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

---

<sup>8</sup> See 29 C.F.R. § 1978.109(a).

<sup>9</sup> 29 C.F.R. § 1978.111(c).