



In the Matter of:

JAMES MADDEN,

ARB CASE NO. 08-004

COMPLAINANT,

ALJ CASE NO. 2006-STA-042

v.

DATE: August 8, 2009

MIDWEST TRANSPORT, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

James Madden, *pro se*, New Lenox, Illinois

For the Respondent:

John S. Elmore, Esq., Robinson, Illinois

FINAL DECISION AND ORDER

James Madden filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA). He alleged that when his former employer, Midwest Transport, Inc., terminated his employment, it violated the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and recodified.¹ The STAA protects from discrimination employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation

¹ 49 U.S.C.A. § 31105 (West 2008). The STAA has been amended since Madden filed his complaint. See Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). It is not necessary to decide whether the amendments are applicable to this complaint, because they are not relevant to the issues presented by the case and, thus, they would not affect our decision.

would violate those rules. After a hearing, a Labor Department Administrative Law Judge (ALJ) recommended that Madden's complaint be dismissed. We affirm.

BACKGROUND

Midwest operates a commercial trucking company with a contract to carry mail for the United States Postal Service. Managing and driving a truck for a company that services United States mail is time sensitive and requires demanding scheduling.² Madden began driving trucks for Midwest on December 6, 2005.³ During a trip on December 13, Madden called his supervisor to inform her that he had exceeded the maximum driving time that Federal regulations allow and that he would not be able to make his assigned run at 9:00 a.m. the next day, December 14.⁴ When Madden arrived home after completing his assignment, he left voice messages on the office answering machine indicating that he needed sleep and would be late for the 9:00 a.m. assignment.⁵ After Madden had not reported for work by noon on December 14, Midwest assigned another driver to take Madden's place, resulting in the shipment being late. Midwest policy requires that when its drivers are over hours, they must inform their supervisors when they can legally resume driving. Midwest fired Madden on December 14 because he had not informed the company when he could resume driving.⁶

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated her jurisdiction to decide this matter to the Administrative Review Board (ARB).⁷ The ARB automatically reviews an ALJ's STAA decision.⁸ 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.⁹ Substantial evidence is that which is more than a mere scintilla. It means "such relevant evidence as a reasonable mind

² Transcript (Tr.) 67.

³ Tr. at 29.

⁴ Tr. at 40-41, 47.

⁵ Tr. at 48.

⁶ Tr. at 67-84, 110.

⁷ See Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 49 U.S.C.A. § 31105(b)(2)(C).

⁸ 29 C.F.R. § 1978.109(a) (2007).

⁹ 29 C.F.R. § 1978.109(c)(3); *BSP Transp., Inc. v. United States 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).

might accept as adequate to support a conclusion.”¹⁰ 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”¹¹ Therefore, we review the ALJ’s conclusions of law de novo.¹²

DISCUSSION

The ALJ’s decision thoroughly and fairly recites the relevant facts underlying this dispute. He found that Madden engaged in STAA-protected activity on December 13 when he reported to his supervisor that he was over hours and could not make the next day’s 9:00 a.m. run. But he also found that Madden did not inform Midwest when he could next drive and did not prove that Midwest’s reason for terminating his employment failing to communicate when he would be able to drive again was a pretext for retaliation. Therefore, since Madden did not prove by a preponderance of evidence that Midwest fired him because of protected activity, as he must, the ALJ dismissed the complaint.

We have reviewed the record and find that substantial evidence on the record as a whole supports the ALJ’s findings. Those findings are therefore conclusive. The ALJ applied the correct legal standard and relevant case law to those findings. Therefore, based solely on these facts and circumstances, we **ADOPT** the ALJ’s Recommended Decision and Order and **DENY** Madden’s complaint.¹³

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

WAYNE C. BEYER
Chief Administrative Appeals Judge

¹⁰ *Clean Harbors Env'tl. Servs. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

¹¹ *See* 5 U.S.C.A. § 557(b) (West 1996); *see also* 29 C.F.R. § 1978.109(b).

¹² *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

¹³ The ALJ’s decision can be found online by entering 2006-STA-00042 into the search box at <http://www.oalj.dol.gov/> or directly by visiting the following link: [http://www.oalj.dol.gov/Decisions/ALJ/STA/2006/MADDEN_JAMES_v_MIDWEST_TRANSPORT_2006STA00042_\(SEP_27_2007\)_144204_CADEC_SD.PDF](http://www.oalj.dol.gov/Decisions/ALJ/STA/2006/MADDEN_JAMES_v_MIDWEST_TRANSPORT_2006STA00042_(SEP_27_2007)_144204_CADEC_SD.PDF).