



In the Matter of:

JANE CUTHRELL,

ARB CASE NO. 08-028

COMPLAINANT,

ALJ CASE NO. 2007-STA-044

v.

DATE: October 6, 2008

WILLIS SHAW EXPRESS,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND DISMISSAL ORDER

Jane Cuthrell complained that Willis Shaw Express violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),¹ and its implementing regulations,² when it discharged her for complaining about the condition of the trucks that she drove.

After an investigation, the Occupational Safety and Health Administration (OSHA) found that Willis Shaw fired Cuthrell for being involved in five preventable accidents between September 2006 and May 2007, and not because she complained about

¹ 49 U.S.C.A. § 31105 (West 2008), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). Section 405 of the STAA 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. The amended provisions are not at issue in this case and thus do not affect our decision.

² 29 C.F.R. Part 1978 (2007).

the trucks' adjustable mirrors, windshield wipers, transmissions, and driver's side doors.³ Accordingly, OSHA dismissed the complaint.⁴

Cuthrell objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).⁵ The ALJ scheduled the case for hearing, but on November 23, 2007, Cuthrell, acting pro se, submitted an unopposed motion to withdraw her "complaint against Willis Shaw Express."

On December 6, 2007, the ALJ issued an Order Granting Withdrawal of Complaint. The ALJ noted that pursuant to 29 C.F.R. § 1978.111(c), a party may withdraw his or her objections to the findings or order of OSHA by filing a written withdrawal with the administrative law judge.⁶ Accordingly, the ALJ canceled the hearing and dismissed Cuthrell's appeal with prejudice. Order at 1-2.

The ALJ forwarded his recommended decision and the administrative record to the Administrative Review Board (ARB or Board) and the case is now before us pursuant to the STAA's automatic review provisions.⁷ The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.⁸ 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.⁹ In reviewing the ALJ's legal conclusions, the Board, as the Secretary's designee, acts with "all the powers

³ OSHA's Findings and Order, July 13, 2007.

⁴ *Id.*

⁵ *See* 29 C.F.R. § 1978.105.

⁶ Order at 1. 29 C.F.R. § 1978.111(c) provides in relevant part:

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.

⁷ *See* 29 C.F.R. § 1978.109(c)(1).

⁸ Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

⁹ 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).

[the Secretary] would have in making the initial decision¹⁰ Therefore, the Board reviews the ALJ's legal conclusions de novo.¹¹

On December 18, 2007, 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 ALJ's decision, or by January 7, 2008.¹² Neither Cuthrell nor Willis Shaw responded to the Board's notice.

Accordingly, we **GRANT** Cuthrell's unopposed motion to withdraw her complaint.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

¹⁰ 5 U.S.C.A. § 557(b) (West 1996).

¹¹ *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

¹² *See* 29 C.F.R. § 1978.109(c)(2).