



In the Matter of:

SCOTT DENDY,

ARB CASE NO. 08-042

COMPLAINANT,

ALJ CASE NO. 2005-STA-016

v.

DATE: February 27, 2009

**HAR-CON CONSTRUCTION
CORPORATION,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND DISMISSAL ORDER

The Complainant, Scott Dendy, filed a whistleblower complaint with the Occupational Safety and Health Administration (OSHA), alleging that the Respondent, Har-Con Construction Corporation, violated the employee protection provisions of the Surface Transportation Assistance Act (STAA)¹ and its implementing regulations² when it terminated his employment and suspended his medical and dental benefits.

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).

OSHA investigated the complaint and found that Har-Con had not discharged Dendy or suspended his benefits in reprisal for engaging in activity protected by the STAA. Dendy objected and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).³

On April 15, 2005, Har-Con submitted to the ALJ its Motion for Summary Judgment (Motion). The ALJ granted Har-Con's Motion on June 28, 2005. According to the ALJ, Dendy "[had] not established that he [had] suffered adverse employment action, much less discriminatory action" pursuant to the STAA. The case came before us pursuant to the STAA's automatic review provisions.⁴ On July 31, 2007, we remanded the case to the ALJ because there were genuine issues of material fact in dispute as to whether Dendy engaged in STAA-protected activity or was subjected to adverse action by Har-Con.

The ALJ scheduled a hearing for January 29, 2008. On January 17, 2008, Dendy and Har-Con filed with the ALJ a joint "Stipulation of Dismissal," requesting that the ALJ "dismiss [Dendy's] causes of action with prejudice, with each party bearing their own costs and attorney's fees." On January 24, 2008, the ALJ issued a Recommended Order of Dismissal (R. O.). 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 ALJ.⁵ Accordingly, the ALJ cancelled the hearing and dismissed Dendy's STAA claim with prejudice.⁶

The ALJ forwarded his R. O. and the administrative record to the Administrative Review Board (ARB or Board), and the case is again before us pursuant to the STAA's automatic review provisions.

The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.⁷ When reviewing STAA cases, the Board is bound by

³ See 29 C.F.R. § 1978.105(a).

⁴ See 29 C.F.R. § 1978.109(c)(1).

⁵ R. O. 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.

⁶ R. O. at 1.

⁷ Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

the ALJ's factual findings if those findings are supported by substantial evidence in the record considered as a whole.⁸ 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"⁹ Therefore, the Board reviews the ALJ's legal conclusions de novo.¹⁰

On January 29, 2008, 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.¹¹ Neither party filed a brief.

Dendy has not objected to the ALJ's decision to recommend dismissal of his appeal, and we know of no reason to reject the ALJ's recommended decision. Accordingly, Dendy's appeal is hereby **DISMISSED** with prejudice.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

⁸ 29 C.F.R. § 1978.109(c)(3); *BSP Trans, 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).

⁹ 5 U.S.C.A. § 557(b) (West 1996).

¹⁰ *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

¹¹ *See* 29 C.F.R. § 1978.109(a).