



In the Matter of:

DONALD THOMASON

ARB CASE NO. 08-105

COMPLAINANT,

ALJ CASE NO. 2008-STA-054

v.

DATE: May 29, 2009

W.T. CONTRACTORS, LLC,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Respondent:

Amy S. Lemley, Esq., Foulston Siefkin, LLP, Wichita, Kansas

FINAL ORDER OF DISMISSAL

This case arises under the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended.¹ Donald Thomason filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that W.T. Contractors, LLC discharged him in violation of the STAA.

OSHA investigated the complaint and found that W.T. Contractors had not violated the STAA. Thomason objected to OSHA's findings and requested a hearing before an Administrative Law Judge (ALJ). The ALJ issued a Notice of Hearing on May 30, 2008,

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.

setting the hearing date for July 8, 2008. On June 19, 2008, Thomason submitted a one-page letter to the ALJ stating that he was “unable to retain legal counsel” and that he had “no intention of pursuing this matter in the future.”

On June 26, 2008, the ALJ issued a Recommended Decision and Order (R. D. & O.), cancelling the hearing and dismissing Thomason’s STAA claim. Citing 29 C.F.R. §1978.111(c), the ALJ construed Thomason’s letter as a withdrawal of his objections to OSHA’s findings.²

This case is now before the ARB pursuant to the automatic review provisions of the STAA.³ The ARB is bound by the ALJ’s factual findings if supported by substantial evidence on the record considered as a whole.⁴ The ARB reviews questions of law de novo.⁵

On July 8, 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 R. D. & O. within thirty days of the date on which the ALJ issued it.⁶ The Respondent filed a one-page brief in support of the R. D. & O. Thomason did not file a brief.

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

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

² R. D. & O. at 1.

³ 49 U.S.C.A. § 31105(b)(2)(C). The implementing regulations provide: “The [ALJ’s] decision shall be forwarded immediately, together with the record, to the Secretary for review by the Secretary or his or her designee.” 29 C.F.R. § 1978.109(c)(1) (2007).

⁴ 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).

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

⁶ *See* 29 C.F.R. § 1978.109(a).