



In the Matter of:

THOMAS JEFFREY LOLLAR,

ARB CASE NO. 08-125

COMPLAINANT,

ALJ CASE NO. 2008-STA-050

v.

DATE: February 27, 2009

MELVIN HICKS TRUCKING, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND DISMISSAL ORDER

The Complainant, Thomas Jeffrey Lollar, filed a whistleblower complaint with the Occupational Safety and Health Administration (OSHA), alleging that the Respondent, Melvin Hicks Trucking, Inc., violated the employee protection provisions of the Surface Transportation Assistance Act (STAA)¹ and its implementing regulations² when it discharged him from employment.

OSHA investigated the complaint and found that Lollar had not been discharged in reprisal for engaging in activity protected by the STAA.³ Lollar objected and

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).

³ Secretary's Findings, April 21, 2008.

requested a hearing before a Department of Labor Administrative Law Judge (ALJ).⁴ On July 29, 2008, Lollar sent an e-mail message to the ALJ stating as follows:

I regret to inform you that I am not going to be able to peruse [sic] any legal action against Melvin Hicks/Melvin Hicks Inc. I have not been able to obtain adequate legal representation.

Thank you for your time.⁵

In response, the ALJ conducted a telephone conference with Lollar and counsel for the Respondent. The ALJ advised Lollar that he did not need an attorney to proceed with his case. According to the ALJ, Lollar indicated that it would be “too stressful for him to engage in litigation” and that he “wished to withdraw his complaint.”⁶ The ALJ advised Lollar that a withdrawal would result in “the final resolution of the matter,” and Lollar “acknowledged that he understood that by withdrawing his complaint, the case would be dismissed.”⁷

The ALJ concluded that Lollar’s request constituted a motion to withdraw his STAA complaint.⁸ The ALJ’s conclusion is consistent with the STAA regulations, specifically 29 C.F.R. § 1978.111(c), which provides that:

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 ALJ cancelled the hearing and recommended that Lollar’s complaint be dismissed. She forwarded Lollar’s file and her R. D. & O. to the Administrative Review Board for review and to issue a final agency decision pursuant to the STAA’s automatic review provisions.⁹

⁴ See 29 C.F.R. § 1978.105(a).

⁵ ALJ Exhibit 1.

⁶ Order Granting Complainant’s Motion to Withdraw Complaint and Request for Hearing; Cancelling Hearing; and Recommended Decision and Order Dismissing Complaint with Prejudice (R. D. & O.) at 3.

⁷ *Id.*

⁸ *Id.*

⁹ See 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1).

The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.¹⁰ When reviewing STAA cases, the Board is bound by the ALJ's factual findings if those findings are supported by substantial evidence in the record considered as a whole.¹¹ 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"¹² Therefore, the Board reviews the ALJ's legal conclusions de novo.¹³

On August 11, 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.¹⁴ Neither party filed a brief.

Lollar has not objected to the ALJ's decision to recommend dismissal of his complaint, and we know of no reason to reject the ALJ's recommended decision. Accordingly, we **GRANT** Lollar's unopposed motion and his appeal is hereby **DISMISSED**.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

¹⁰ Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

¹¹ 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).

¹² 5 U.S.C.A. § 557(b) (West 1996).

¹³ *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

¹⁴ *See* 29 C.F.R. § 1978.109(a).