



In the Matter of:

REGINALD JOHNSON,

ARB CASE NO. 09-031

COMPLAINANT,

ALJ CASE NO. 2008-STA-058

v.

DATE: May 29, 2009

LACLEDE GAS COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL ORDER OF DISMISSAL

This case arises under the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended.¹ Reginald Johnson filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Laclede Gas Company discharged him in violation of the STAA.

OSHA investigated the complaint and found that Laclede had not violated the STAA. Johnson objected to OSHA's findings and requested a hearing before an Administrative Law Judge (ALJ). The ALJ issued a Notice of Hearing on August 25, 2008, setting the hearing date for December 9, 2008. On November 13, 2008, Johnson submitted a one-page letter to the ALJ stating that he had "decided to withdraw [his] appeal" and requesting the ALJ to "undertake whatever is necessary to facilitate the withdrawal of [his] appeal." On December

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.

2, 2008, Laclede submitted a Stipulation for Dismissal of Case to the ALJ, indicating that both parties agreed to dismissal of the case.

On December 3, 2008, the ALJ issued a Recommended Order Approving Withdrawal of Appeal and Dismissing Claim with Prejudice (R. O.), dismissing Johnson's STAA claim. Citing 29 C.F.R. §1978.111(c), the ALJ construed Johnson'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 December 22, 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.⁶ Neither party filed a brief.

Johnson 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, Johnson's case is hereby **DISMISSED** with prejudice.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

² R. O. at 1.

³ 49 U.S.C.A. § 31105(b)(2)(C). The STAA's 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).