



In the Matter of:

MICKEY WARD,

ARB CASE NO. 09-060

COMPLAINANT,

ALJ CASE NO. 2008-STA-009

v.

DATE: June 30, 2009

**PIKE COUNTY NON-PROFIT BOARD, aka
PIKE COUNTY ADULT ACTIVITIES CENTER,
d/b/a CANAL INDUSTRIES,**

RESPONDENTS.

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 Mickey Ward filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Pike County Non-Profit Board, aka Pike County Adult Activities Center, d/b/a Canal Industries (the Respondents), suspended and discharged him in violation of the STAA.

OSHA investigated the complaint and found that the Respondents had not violated the STAA. Ward objected to OSHA's findings and requested a hearing before an Administrative Law Judge (ALJ). The ALJ issued a Prehearing Order on January 2, 2009, instructing the parties to submit mutually agreeable dates for a hearing on the complaint. On

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.

January 19, 2009, Ward submitted a one-page letter to the ALJ stating that he wished to withdraw “his appeal.”

On February 6, 2009, the ALJ issued a Recommended Order Approving Withdrawal of Objection to OSHA’s Findings and Recommended Order Approving OSHA’s Findings (R. O.). Citing 29 C.F.R. § 1978.111(c), the ALJ construed Ward’s letter as a withdrawal of his objections to OSHA’s findings.²

This case is now before the Administrative Review Board (ARB) pursuant to the STAA’s automatic review provisions.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 February 20, 2009, 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.

Ward 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, Ward’s case is hereby **DISMISSED** with prejudice.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

WAYNE C. BEYER
Chief Administrative Appeals Judge

² R. O. at 2.

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).