



In the Matter of:

SHUKRI JOHN AMIN,

ARB CASE NO. 09-064

COMPLAINANT,

ALJ CASE NO. 2009-STA-002

v.

DATE: May 11, 2009

MARTEN TRANSPORTATION, LTD.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**FINAL DECISION AND ORDER GRANTING WITHDRAWAL OF
OBJECTIONS TO SECRETARY'S FINDINGS**

The Complainant, Shukri John Amin, filed a whistleblower complaint with the Occupational Safety and Health Administration (OSHA), alleging that the Respondent, Marten Transportation, Ltd., violated the employee protection provisions of section 405 of the Surface Transportation Assistance Act (STAA)¹ and its implementing regulations² when it retaliated against him by terminating his employment because he refused to violate the hours of service regulations. OSHA investigated the complaint and found it to have no merit. Amin objected and requested a hearing by a Department of Labor Administrative Law Judge (ALJ).³

¹ 49 U.S.C.A. § 31105 (West 2008). 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 29 C.F.R. Part 1978 (2007).

³ See 29 C.F.R. § 1978.105(a).

The ALJ to whom the case had been assigned scheduled a hearing for March 12, 2009, in Detroit, Michigan. On February 6, 2009, Amin filed a letter with the ALJ indicating his desire to withdraw his case because he did not have legal counsel and he questioned the Respondent's ethics.

In response, the ALJ issued an Order to Show Cause Why Complainant's Letter Should Not be Considered a Request to Withdraw His Objections to OSHA Findings. In this order the ALJ explained that the STAA and its regulations do not specifically provide for withdrawal of a complaint once the case has been referred to an administrative law judge for hearing, but that the STAA's implementing regulations do provide:

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 judge or the Administrative Review Board, United States Department of Labor, as the case may be, shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.^[4]

The ALJ also explained that the basis for Amin's request to withdraw his complaint was not completely clear. The ALJ deduced that it was based upon Amin's lack of representation and to some alleged improper conduct by the Respondent. He informed Amin that withdrawal of his objections would result in permanent dismissal of his complaint without the opportunity to pursue it further. He noted that while legal assistance could be helpful, it was not required to pursue his complaint and that Amin should bring any improper conduct by the Respondent, its counsel or its agent to the ALJ's attention so that the ALJ could determine whether he should issue a sanction or penalty. Accordingly, the ALJ "ORDERED THAT BOTH PARTIES, within ten days of the date of this Order, shall CLEARLY STATE WHETHER COMPLAINANT'S OBJECTIONS TO OSHA'S FINDINGS MAY BE WITHDRAWN and those findings affirmed as the final decision of the Secretary of Labor."⁵

Amin responded to the show cause order indicating that he no longer wished to pursue his case with Marten. He stated that he did not believe that it was appropriate to continue with the case without legal representation because his knowledge of how the system worked was based on "a few episodes of law and order [sic]." He also said that he felt Marten's counsel dealt unethically with him when scheduling his deposition and he attached letters counsel had written to him in response to Amin's position that he would only agree to be deposed for twenty minutes. He also stated that he believed

⁴ Order to Show Cause at 2 (quoting 29 C.F.R. § 1978.111(c)).

⁵ Order to Show Cause at 2.

Marten had conspired against him to insure that he would not get a driving job with any other trucking company. Amin concluded, “Since I only have my suspicions, and unable [sic] to obtain help from anyone or get legal counsel to help me through this mess[,] I decided to withdraw myself from the case 2009-STA-002. Wishing to no longer peruse [sic] this matter.”⁶

On February 23, 2009, the ALJ issued his Recommended Order Approving Withdrawal of Objection to OSHA’s Findings and Recommended Order Approving OSHA’s Findings (R. O.). As an initial matter, the ALJ reviewed the two letters from Marten’s counsel to Amin that Amin had attached to his response to the show cause order and he concluded, “I see nothing which indicates improper conduct by Respondent or its counsel in the two letters.”⁷ In addition, the ALJ reiterated the terms of 29 C.F.R. § 1978.111(c) and concluded that Amin’s response to the show cause order requesting to withdraw himself from the case because he no longer wished to pursue it was “tantamount to a request to withdraw any objections to OSHA’s findings.”⁸

The ALJ forwarded the file and his recommended decision to the Administrative Review Board for review and to issue a final agency decision pursuant to the STAA’s automatic review provisions.⁹ 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

⁶ Response to Show Cause Order dated Feb. 16, 2009, at 2.

⁷ R. O. at 2.

⁸ *Id.* at 3 (citing *Thompson v. Inland Northwest Dairies, LLC*, ARB No. 07-085, ALJ No. 2007-STA-031 (ARB July 31, 2007)).

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

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. 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).

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).

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 Marten responded that it did not intend to file a brief, and Amin did not file a brief with the Board.

When the ALJ gave Amin the opportunity to show cause why his request to withdraw from the case should not be treated as a motion to withdraw his objections to OSHA's findings pursuant to 29 C.F.R. § 1978.111(c), Amin did not object to the ALJ's stated intention to so treat his motion. Furthermore, we know of no reason to reject the ALJ's recommended decision. Accordingly, we **ACCEPT** the ALJ's recommended order, **GRANT** the withdrawal of objections to the Secretary's preliminary findings and **AFFIRM** those findings denying Amin's complaint as provided in 29 C.F.R. § 1978.111(c).

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

¹⁴ See 29 C.F.R. § 1978.109(a).