



**In the Matter of:**

**IVAN NEUBAUER,**

**ARB CASE NO. 09-073**

**COMPLAINANT,**

**ALJ CASE NO. 2009-STA-014**

**v.**

**DATE: May 29, 2009**

**THE TILE SHOP LLC,**

**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.<sup>1</sup> Ivan Neubauer filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that The Tile Shop LLC discharged him in violation of the STAA.

OSHA investigated the complaint and found that The Tile Shop had not violated the STAA. Neubauer objected to OSHA's findings and requested a hearing before an Administrative Law Judge (ALJ). The ALJ issued a Notice of Hearing on January 23, 2009, setting the hearing date for March 24, 2009. On March 5, 2009, Neubauer submitted a one-page letter to the ALJ stating that "[he] decided to withdraw [his] complaint."

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<sup>1</sup> 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.

On March 6, 2009, the ALJ issued a Recommended Order Approving Withdrawal of Objections and Dismissing Claim (R.O.), dismissing Neubauer's STAA claim. Citing 29 C.F.R. §1978.111(c), the ALJ construed Neubauer's letter as a withdrawal of his objections to OSHA's findings.<sup>2</sup>

This case is now before the Administrative Review Board (ARB) pursuant to the STAA's automatic review provisions.<sup>3</sup> The ARB is bound by the ALJ's factual findings if supported by substantial evidence on the record considered as a whole.<sup>4</sup> The ARB reviews questions of law de novo.<sup>5</sup>

On March 17, 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.<sup>6</sup> Neither party filed a brief.

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

**SO ORDERED.**

**WAYNE C. BEYER**  
**Chief Administrative Appeals Judge**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

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<sup>2</sup> R. O. at 1.

<sup>3</sup> 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).

<sup>4</sup> 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).

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

<sup>6</sup> *See* 29 C.F.R. § 1978.109(a).