



**In the Matter of:**

**SEAN MCFARLAND,**  
  
**COMPLAINANT,**

**v.**

**SPECIAL-LITE, INC.,**  
  
**RESPONDENT.**

**ARB CASE NO. 09-132**

**ALJ CASE NO. 2009-STA-051**

**DATE: October 28, 2009**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**FINAL DECISION AND ORDER  
DISMISSING COMPLAINT WITH PREJUDICE**

Sean McFarland filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) on March 26, 2009. He alleged that his employer, Special-Lite, Inc., violated the employee protection provisions of the Surface Transportation Assistance Act (STAA or Act) of 1982, as amended and re-codified,<sup>1</sup> when it terminated his employment. The STAA protects from discrimination employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would violate those rules. A Department of Labor (DOL) Administrative Law Judge (ALJ) dismissed McFarland's complaint after McFarland requested that the case be dismissed. We affirm.

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<sup>1</sup> 49 U.S.C.A. § 31105 (West 2008).

## BACKGROUND

McFarland alleged in his complaint that he was grounded for 24 hours after police stopped him because he did not have a medical card and that he drove two hours over the hours of service with his supervisor riding in the truck and was instructed by him not to stop at a hotel.<sup>2</sup> He stated that he threatened to complain about the incidents and Special-Lite terminated his employment.<sup>3</sup> Following an investigation, OSHA found that a preponderance of the evidence supported Special-Lite's position that McFarland's protected activity was not a contributing factor in his termination but that his termination was the result of a legitimate business reason.<sup>4</sup>

On June 22, 2009, McFarland filed an objection to OSHA's findings and requested a hearing before a United States Department of Labor Administrative Law Judge (ALJ). On July 20, 2009, he requested that the ALJ dismiss the case.

On July 23, 2009, the ALJ issued an Order to Show Cause and cancelled the hearing based on McFarland's request for withdrawal. In the Order to Show Cause the ALJ notified McFarland that the ALJ would construe his request to withdraw his complaint as a motion to withdraw his objections to the Secretary's preliminary findings pursuant to 29 C.F.R. § 1978.111(c).<sup>5</sup> McFarland did not respond to the Order to Show Cause, but Special-Lite indicated that it had no objections to the preliminary findings and requested dismissal of the complaint.

On August 14, 2009, the ALJ issued a Recommended Order Granting Withdrawal, noting that pursuant to 29 C.F.R. § 1978.111(c),<sup>6</sup> a complainant may file a written withdrawal of objections to the Secretary's preliminary findings with an ALJ at any time before the findings or

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<sup>2</sup> Original Complaint, March 30, 2009; OSHA's Final Investigation Report, June 15, 2009.

<sup>3</sup> Original Complaint (Mar. 30, 2009).

<sup>4</sup> Secretary's Findings at 2 (June 15, 2009).

<sup>5</sup> Order to Show Cause and Cancellation of Hearing at 1 (July 23, 2009).

<sup>6</sup> This regulation provides:

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.

order becomes final. Thus, the ALJ construed McFarland's request as a withdrawal of objections to the Secretary's preliminary findings.<sup>7</sup>

The case is now before the Administrative Review Board (ARB) pursuant to the STAA's automatic review provisions.<sup>8</sup> The ARB "shall issue a final decision and order based on the record and the decision and order of the administrative law judge."<sup>9</sup>

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 or by September 14, 2009.<sup>10</sup> Neither of the parties filed a brief.

The ALJ's recommended order complies with applicable STAA statutory and regulatory provisions. Consistent with 29 C.F.R. § 1978.111(c), the ALJ recommended that McFarland's claim be dismissed based on his request for a dismissal, which, upon notice to the Complainant, the ALJ treated as a withdrawal of his objections to the findings of the Secretary.

#### CONCLUSION

Neither party has objected to the ALJ's decision to recommend dismissal of this claim, and we know of no reason to reject the ALJ's recommended decision. Accordingly, McFarland's claim is hereby **DISMISSED** with prejudice and the Secretary's preliminary findings are **AFFIRMED**.

**SO ORDERED.**

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

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

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<sup>7</sup> ALJ's Recommended Order at 1 (Aug. 14, 2009) (citing *Mysinger v. Rent-A-Driver*, 1990-STA-023 (Sec'y Sept. 21, 1990)).

<sup>8</sup> 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1).

<sup>9</sup> 29 C.F.R. § 1978.109(c); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050, slip op. at 2 (ARB Sept. 26, 2001).

<sup>10</sup> *See* 29 C.F.R. § 1978.109(a).