



In the Matter of:

PATRICK NORTON,

ARB CASE NO. 10-011

COMPLAINANT,

ALJ CASE NO. 2009-STA-070

v.

DATE: November 25, 2009

USA TRUCKING,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

For the Complainant:

Patrick Norton, pro se, Enid, Oklahoma

For the Respondent:

Joseph F. Gilker, Esq., *Gilker and Jones*, Mountainburg, Arkansas

FINAL DECISION AND DISMISSAL ORDER

Patrick Norton complained that USA Trucking violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),¹ and its implementing regulations,² when it refused to reinstate him because of a complaint he had filed against a former employer.

After an investigation, the Occupational Safety and Health Administration (OSHA) found that Norton's claim of retaliation was not timely filed as it was filed more than 180 days after the

¹ 49 U.S.C.A. § 31105 (Westlaw 2009). 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 (2009).

date USA Trucking allegedly refused to rehire him. Accordingly, OSHA dismissed the complaint.³ Norton objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).⁴

The ALJ scheduled the case for hearing, but on October 16, Norton filed a "request to drop [his] claim," which the ALJ construed as a motion for voluntary withdrawal of his objections to the Secretary's findings. The ALJ noted that pursuant to 29 C.F.R. § 1978.111(c), a party may withdraw his objections to the findings or order of OSHA by filing a written withdrawal with the administrative law judge.⁵ Accordingly, the ALJ canceled the hearing and on October 20, 2009, issued a Recommended Order (R. O.) dismissing Norton's complaint with prejudice.⁶

The ALJ forwarded his recommended decision and the administrative record to the Administrative Review Board (ARB or Board), and the case is now before us pursuant to the STAA's automatic review provisions.⁷ The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.⁸ When reviewing STAA cases, the ARB is bound by the ALJ's factual findings if those findings are supported by substantial evidence in the record considered as a whole.⁹ In reviewing the ALJ's legal conclusions, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in

³ Secretary's Findings and Order at 1.

⁴ See 29 C.F.R. § 1978.105.

⁵ R. O. at 1. 29 C.F.R. § 1978.111(c) provides in relevant part:

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.

⁶ R. O. at 2.

⁷ See 29 C.F.R. § 1978.109(c)(1).

⁸ Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

⁹ 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).

making the initial decision”¹⁰ Therefore, the Board reviews the ALJ’s legal conclusions de novo.¹¹

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 ALJ’s decision, or by November 19, 2009.¹² USA Trucking responded to the Board’s request with a brief indicating that it supported the ALJ’s R. O.

The ALJ’s R. O. approving dismissal of Norton’s complaint is in accordance with 29 C.F.R. § 1978.111(c). Accordingly, we **AFFIRM** the ALJ’s R. O. dismissing Norton’s complaint.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

WAYNE C. BEYER
Chief Administrative Appeals Judge

¹⁰ 5 U.S.C.A. § 557(b) (Westlaw 1996).

¹¹ *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

¹² *See* 29 C.F.R. § 1978.109(c)(2).