



In the Matter of:

SHER L. HATLEY,

ARB CASE NO. 10-034

COMPLAINANT,

ALJ CASE NO. 2007-STA-046

v.

DATE: June 30, 2010

HALLIBURTON, INC.,

and

EXCEL DRIVERS SERVICES,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*, and E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*

FINAL DECISION AND DISMISSAL ORDER

Sher L. Hatley complained that Excel Drivers Services and Halliburton, Inc. violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),¹ and its implementing regulations² when Excel removed her from a

¹ 49 U.S.C.A. § 31105 (Thomson/West 2007 & Supp. 2009), 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. The amended provisions are not at issue in this case and thus do not affect our decision.

truck drivers training program and Halliburton, Inc. terminated her employment because she complained about logbook violations and a broken driver's seat.

After an investigation, the Occupational Safety and Health Administration (OSHA) found that there was no evidence to support Hatley's claim that she complained about motor safety concerns to Excel Drivers Services or that Halliburton had any knowledge of her concerns until after the decision to terminate her employment was made and instituted.³ Hatley objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).⁴

On March 3, 2008, Hatley filed a Motion to Dismiss Appeal Request, stating that she "requests to dismiss her Request for Appeal at this time due to personal family health issues and financial inability to pursue her claim."⁵ In response, the ALJ issued an Order of Dismissal in which he granted Hatley's request and citing 29 C.F.R. § 1978.111(c) stated, "A withdrawal of a request for a hearing re-instates the determination of the Occupational Health and Safety [sic] Administration that the Respondent did not violate STAA."⁶

The case is now before the Administrative Review Board pursuant to the STAA's automatic review provisions.⁷ The Secretary of Labor has delegated to the Board her

² 29 C.F.R. Part 1978 (2009).

³ Secretary's Findings, Aug. 8, 2007.

⁴ See 29 C.F.R. § 1978.105.

⁵ *Hatley v. Halliburton, Inc.*, ALJ No. 2007-STA-046, slip op. at 1 (Dec. 2, 2009).

⁶ *Id.* Accord *Mysinger v. Rent-A-Drive*, 1990-STA-023 (Sec'y Sept. 21, 1990). 29 C.F.R. § 1978.111(c) 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.

⁷ See 29 C.F.R. § 1978.109(c)(1).

authority to issue final agency decisions under the STAA.⁸ 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.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 making the initial decision"¹⁰ Therefore, the Board reviews the ALJ's legal conclusions de novo.¹¹

On December 16, 2009, the Board issued a Notice of Intent to 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 (30) days of the ALJ's decision, or by January 4, 2010.¹² None of the parties responded to the Board's notice.

None of the parties have objected to the ALJ's Order, and we know of no reason to reject it. Accordingly, we **AFFIRM** the ALJ's Order of Dismissal and **GRANT** Hatley's unopposed request to dismiss her complaint.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

⁸ Secretary's Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010); 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).

¹⁰ 5 U.S.C.A. § 557(b) (West 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).