



In the Matter of:

EDWARD G. DAVIS JR.,

ARB CASE NO. 10-046

COMPLAINANT,

ALJ CASE NO. 2010-STA-003

v.

DATE: March 24, 2010

CPC LOGISTICS,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

Edward G. Davis, Jr. filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) on May 29, 2009. He alleged that his employer, CPC Logistics, violated the employee protection provisions of the Surface Transportation Assistance Act (STAA or Act) of 1982, as amended and re-codified,¹ 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 Davis's complaint after Davis indicated that he wished to withdraw it. We affirm.

CPC Logistics employed Davis as a dispatch supervisor.² Davis alleged that CPC terminated his employment because he voiced concerns to management and reported that two

¹ 49 U.S.C.A. § 31105 (Thomson/West Supp.2009).

² OSHA's Final Investigation Report at 1 (Oct. 30, 2009).

truck drivers had falsified information.³ He alleged that he learned on November 8, 2008, that a driver had falsified Davis's hours a year prior.⁴ Davis immediately reported the incident to management. Davis believed that management was upset with him for reporting the falsification.

Following an investigation, OSHA found that a preponderance of the evidence indicated that Davis's protected activity was not a contributing factor in his termination.⁵ The evidence revealed that on January 8, 2009, a truck driver reported to Davis that he had been in an accident, and Davis breached company policy by not reporting the accident until seven hours later because he forgot. He also failed to instruct the driver to submit to an alcohol and drug-screening test.

Davis filed an objection to OSHA's findings and requested a hearing before a United States Department of Labor Administrative Law Judge. On January 5, 2010, he requested that the ALJ dismiss the case.

On January 8, 2010, the ALJ issued a Recommended Order - Approving Withdrawal of Objections and Dismissing Complaint, noting that pursuant to 29 C.F.R. § 1978.111(c),⁶ 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 order becomes final. Thus, the ALJ construed Davis's request as a withdrawal of objections to the Secretary's preliminary findings.⁷

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

³ *Id.* at 2.

⁴ *Id.*

⁵ Secretary's Findings at 2 (June 15, 2009).

⁶ 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.

⁷ ALJ's Recommended Order at 1 (Jan. 8, 2010).

⁸ 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1)(2009).

The STAA's implementing regulations permit each party to submit a brief in support of or in opposition to the ALJ's order;¹⁰ however, neither party submitted 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 Davis's claim be dismissed based on his request to withdraw his complaint, which 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, Davis's claim is hereby **DISMISSED** with prejudice and the Secretary's preliminary findings are **AFFIRMED**.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

⁹ 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).

¹⁰ 29 C.F.R. § 1978.109(c)(2).