



In the Matter of:

CURTIS FIREBAUGH,

ARB CASE NO. 10-087

COMPLAINANT,

ALJ CASE NO. 2010-STA-013

v.

DATE: June 30, 2010

**FREMONT RIDE-OUT DRUG,
EARL SEDDON (SEDDON &
WROBLESKI), AND BOB SINNETT
(SINNETT CONSULTING),**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge* and Wayne C. Beyer,
*Administrative Appeals Judge***

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

The Complainant, Curtis Firebaugh, alleged that the Respondents violated the employee protection provisions of the Surface Transportation Assistance Act (STAA or Act) of 1982, as amended and re-codified,¹ and its implementing regulations,² when they effectively blacklisted

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.

² 29 C.F.R. Part 1978 (2009).

him from employment by falsely accusing him of failing a drug or alcohol test while working for a former employer. A Department of Labor Administrative Law Judge (ALJ) dismissed Firebaugh's complaint after Firebaugh requested that the case be dismissed. We affirm.

BACKGROUND

Firebaugh alleged that the Respondents blacklisted him when they accused him of failing a drug or alcohol test while working for a prior employer. Secretary's Findings at 1 (Dec. 21, 2009). Following an investigation, the Secretary found that Firebaugh had not applied to work for or worked for any of the Respondents and that therefore, no employer-employee relationship existed. The Secretary thus found that OSHA lacked jurisdiction to investigate Firebaugh's claims and dismissed his complaint. Secretary's Findings at 1.

Firebaugh filed an objection to the Secretary's findings and requested a hearing before an ALJ. On March 29, 2010, however, Firebaugh requested the ALJ to cancel his hearing because he did not have legal representation and because he realized that he did not have an employer/employee relationship with Fremont Ride-Out Drug.

In response to Firebaugh's request, the ALJ issued an order to show cause why the Secretary's findings should not be affirmed, citing 29 C.F.R. § 1978.111(c).³ The ALJ noted that while he could accept Firebaugh's letter as a request to withdraw his objections, he wanted to be certain that Firebaugh was not doing so under any misconceptions. The ALJ explained in the show cause order that Firebaugh may have been able to secure an attorney to represent him. He also provided Firebaugh with the correct hearing location. Finally, the ALJ pointed out the while Firebaugh stated that he did not have an employer/employee relationship with Fremont Ride-Out Drug, he did "not make any similar statement about the other named Respondents." The ALJ ordered Firebaugh to respond to the order confirming whether he wished to withdraw his objections.

³ 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.

29 C.F.R. § 1978.111(c).

Firebaugh responded to the show cause order, saying that he could “not substantiate an employer/employee relationship” with any of the Respondents and that he was requesting cancellation of all hearings scheduled for him. On April 8, 2010, the ALJ issued a Recommended Order Approving Withdrawal of Objections, Affirming the Secretary’s Findings, and Dismissing Claim, finding that pursuant to 29 C.F.R. § 1978.111(c), Firebaugh had withdrawn his objections to the Secretary’s findings.⁴

The case is now before the ARB pursuant to the STAA’s automatic review provisions.⁵ The ARB “shall issue a final decision and order based on the record and the decision and order of the administrative law judge.”⁶ Although the ARB issued a Notice of Review and Briefing Schedule permitting each party to submit a brief in support of or in opposition to the ALJ’s order, none of the parties 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 Firebaugh’s claim be dismissed based on Firebaugh’s request that the ALJ cancel his hearing, which, after notice to Firebaugh, 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 complaint, and we know of no reason to reject the ALJ’s recommended decision. Accordingly, Firebaugh’s claim is hereby **DISMISSED** with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

⁴ *Firebaugh v. Fremont Ride-Out Drug*, 2010-STA-013, slip op. at 3 (Apr. 8, 2010).

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

⁶ 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).