



In the Matter of:

DENNIS C. SCHUKAY,

ARB CASE NO. 10-102

COMPLAINANT,

ALJ CASE NO. 2010-STA-028

v.

DATE: June 30, 2010

C & R TRANSPORTATION & REPAIR,

RESPONDENT.

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 ORDER
DISMISSING COMPLAINT WITH PREJUDICE**

The Complainant, Dennis C. Schukay, alleged that C & R Transportation & Repair (C & R), violated the employee protection provisions of the Surface Transportation Assistance Act (STAA or Act) of 1982, as amended and re-codified, and its implementing regulations, when C & R terminated his employment in retaliation for protected activities. 49 U.S.C.A. § 31105 (Thomson/West Supp. 2009); 29 C.F.R. Part 1978 (2009). A Department of Labor (DOL) Administrative Law Judge (ALJ) dismissed Schukay's complaint after Schukay requested that the case be dismissed. We affirm.

BACKGROUND

Schukay alleged that he was discharged in retaliation for raising safety concerns about driving while intoxicated, driving in violation of the hours of service rules, and for refusing to drive in violation of the hours of service rules. OSHA's Final Investigation Report at 1 (June 15, 2009). Following an investigation, the Secretary found that a preponderance of the evidence

supported C & R's position that Schukay did not engage in protected activity under the STAA. Secretary's Findings at 4 (Feb. 9, 2010).

Schukay filed an objection to the Secretary's findings and requested a hearing before an ALJ. On April 29, 2010, however, Schukay requested that the ALJ dismiss the case. He stated that he had recently moved and would not be available to participate in the action and that he was satisfied that justice had been served because C & R was out of business and thus, could "no longer put drivers or vehicles on the road, putting other motorists at risk."

On May 11, 2010, the ALJ issued a Recommended Order Approving Complainant's Request for Dismissal and Order Cancelling Hearing, noting that pursuant to 29 C.F.R. § 1978.111(c), a complainant may withdraw his objections to the Secretary's findings with an ALJ at any time before the findings or order becomes final. Thus, the ALJ construed Schukay's request for dismissal as a withdrawal of objections to the Secretary's preliminary findings. ALJ's Recommended Order at 2 (May 11, 2010); *see Mysinger v. Rent-A-Driver*, 1990-STA-023 (Sec'y Sept. 21, 1990).

The case is now before the ARB pursuant to the STAA's automatic review provisions. 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1). The ARB "shall issue a final decision and order based on the record and the decision and order of the administrative law judge." 29 C.F.R. § 1978.109(c).

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, neither party submitted a brief.

The ALJ's recommended order complies with applicable STAA statutory and regulatory provisions. The STAA's implementing regulation at 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.

Consistent with 29 C.F.R. § 1978.111(c), the ALJ recommended that Schukay's claim be dismissed based on his request for a dismissal, 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, Schukay's claim is hereby **DISMISSED** with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge