



In the Matter of:

BEAUFORD SALYER,

ARB CASE NO. 14-055

COMPLAINANT,

ALJ CASE NO. 2012-STA-023

v.

DATE: September 29, 2015

SUNSTAR ENGINEERING,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Beauford Salyer, *pro se*, Middletown, Ohio

For the Respondent:

C. Mark Kingseed, *Esq.*, Coolidge Wall Co., LPA, Dayton, Ohio

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*; and Joanne Royce, *Administrative Appeals Judge*

FINAL DECISION AND ORDER

This case arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982, as amended (STAA), 49 U.S.C.A. § 31105(a) (Thomson Reuters Supp. 2015). *See also* 29 C.F.R. Part 1978 (2014). Complainant Beauford Salyer was employed probationally by Respondent, Sunstar Engineering, starting October 17, 2011, at the Springboro, Ohio location. On January 13, 2012, Sunstar claims it extended Salyer's employment probation period by thirty days due to performance issues. In response, Salyer submitted his resignation, but offered to stay on so that Sunstar could find a replacement driver. Salyer received a memorandum on January 19th informing him that his resignation had been accepted and he was terminated as of January 19, 2012.

Salyer filed a complaint with the Occupational Safety and Health Administration (OSHA) on March 16, 2012. Salyer claimed that Sunstar extended his probationary period because he had made safety complaints. OSHA dismissed Salyer's claim, and the case was assigned to an Administrative Law Judge (ALJ). The ALJ held a hearing, and in his ensuing decision ruled against Salyer. Salyer appeals the ALJ's order to the Administrative Review Board (ARB or Board).¹

Under STAA's whistleblower protection provisions, an employer "may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because the employee . . . has filed a complaint . . . related to a violation of a commercial motor vehicle safety or security regulation, standard, or order." 49 U.S.C.A. § 31105(a)(1)(A)(i). Internal complaints to management are protected under this provision. *Williams v. Domino's Pizza*, ARB No. 09-092, ALJ No. 2008-STA-052, slip op. at 7 (ARB Jan. 31, 2011). To prevail on his STAA whistleblower complaint, Salyer must prove by a preponderance of the evidence that (1) his safety complaints to his employer were protected activity; (2) the company took an adverse action against him; and (3) his protected activity was a contributing factor to the adverse personnel action. *Williams v. Domino's Pizza, supra*, slip op. at 6. An employer may avoid liability if it "demonstrates by clear and convincing evidence" that it would have taken the same adverse action in any event. *Id.*

The ALJ concluded that Salyer engaged in protected activity when he made internal safety reports and that Sunstar knew of Salyer's protected activity. The ALJ also concluded that the extension of Salyer's probationary period constituted an adverse action because it affected his benefits. But the ALJ concluded that Salyer had failed to prove that his protected activity contributed to the extension of his probationary period. The ALJ also concluded that Sunstar had demonstrated by clear and convincing evidence that it would have extended Salyer's probationary period absent Salyer's protected activity.

Salyer filed a one-page petition for review with the Administrative Review Board. Salyer's petition fails to address or even mention the ALJ's main holdings. Salyer makes assertions about hazardous materials being improperly transported and falsifying bills of lading and weights. Salyer does not substantively challenge or mention the ALJ's holdings concerning Sunstar's extension of Salyer's probationary period, let alone make any allegation that the ALJ erred in finding no causal connection between his protected activity and the extension.

Salyer's conclusory assertions fail to identify specific assignments of error followed by legal arguments supported by authority. Despite Salyer's *pro se* status, he has the obligation to identify ALJ holdings for this Board to review on appeal and to substantiate those issues with

¹ The Administrative Review Board has authority to hear STAA whistleblower appeals. Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69378 (Nov. 16, 2012); 29 C.F.R. § 1978.110.

supported legal argument.² Salyer's pleadings fail to state a sufficient basis for reversal even when viewed with the latitude warranted by his *pro se* status.³

Notwithstanding the inadequacies of Salyer's pleadings, the Board has independently evaluated the ALJ's decision and found that it is both supported by the substantial evidence of record and in accord with applicable law. We do not, however, endorse the ALJ's causation finding since we are not convinced he correctly applied the pertinent law.⁴ Nevertheless, the ALJ alternatively found that even had Salyer proved causation, Sunstar established by clear and convincing evidence that it would have extended his probationary period regardless of his protected activity. Substantial evidence of record supports this finding and we affirm it.

² *Development Resources, Inc.*, ARB No. 02-046, slip op. at 4 (ARB Apr. 11, 2002) citing *Tolbert v. Queens Coll.*, 242 F.3d 58, 75-76 (2d Cir. 2001) ("settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation are deemed waived"); see also *United States v. Hayter Oil Co.*, 51 F.3d 1265, 1269 (6th Cir. 1995) quoting *U.S. v. Phibbs*, 999 F.2d 1053, 1080 n.12 (6th Cir. 1993) ("[I]t is not our function to craft an appellant's arguments."); *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir.1991); *Van Allen v. Cuomo*, 621 F.3d 244, 249 n.2 (2d Cir. 2010).

³ The Board "construe[s] complaints and papers filed by pro se complainants 'liberally in deference to their lack of training in the law' and with a degree of adjudicative latitude." *Menefee v. Tandem Transp. Co.*, ARB No. 09-046, ALJ No. 2008-STA-055, slip op. at 7 (ARB Apr. 30, 2010) (quoting *Cummings v. USA Truck, Inc.*, ARB No. 04-043, ALJ No. 2003-STA-047, slip op. at 2 (ARB Apr. 26, 2005) (citations omitted)).

⁴ The ALJ bases his finding of no contributing factor causation on the lack of evidence indicating that the extension of Salyer's employment probationary period was motivated by Salyer's safety complaints. See D. & O. at 16. However, as the ARB has repeatedly recognized, under the STAA, as amended, an employee need not demonstrate the existence of a retaliatory motive on the part of the employer taking the alleged prohibited personnel action in order to establish that his protected activity was a contributing factor to the personnel action. See, e.g., *Beatty v. Inman Trucking Mgmt.*, ARB No. 13-039, ALJ Nos. 2008-STA-020, -021, slip op. at 8 (ARB May 13, 2014); *White v. Action Expediting, Inc.*, ARB No. 13-015, ALJ No. 2011-STA-011, slip op. at 5 (ARB June 6, 2014); *Blackie v. D. Pierce Transp.*, ARB No. 13-065, ALJ No. 2011-STA-055, slip op. at 10 (ARB June 17, 2014).

Accordingly, the ALJ's Decision and Order dismissing Salyer's complaint is **AFFIRMED**.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge