



In the Matter of:

FERNANDO DEMECO WHITE,

ARB CASE NO. 15-057

COMPLAINANT,

ALJ CASE NO. 2011-STA-032

v.

DATE: March 17, 2017

AMERICAN MOBILE PETROLEUM, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Fernando Demeco White, *pro se*, Clarkston, Georgia

For the Respondent:

Dean R. Fuchs, Esq.; *Schulten Ward & Turner, LLP*; Atlanta, Georgia

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; and Leonard J. Howie, *Administrative Appeals Judge*

FINAL DECISION AND ORDER

This case arises under the Surface Transportation Assistance Act (STAA or Act) of 1982, as amended, 42 U.S.C.A. § 31105 (Thomson/West Supp. 2016), and its implementing regulations at 29 C.F.R. Part 1978 (2016). Fernando Demeco White filed a complaint with the Occupational Safety and Health Administration (OSHA) on January 18, 2011, alleging that his

employer, Respondent American Mobile Petroleum, Inc., fired him in retaliation for refusing to exceed the speed limit, in violation of the STAA's employee protection provisions. White had worked as a commercial fuel truck driver for the Respondent for five days, from August 8 until August 13, 2010, when Respondent fired him. OSHA dismissed the complaint.

White requested a formal hearing. On February 16, 2012, prior to a hearing, a United States Department of Labor Administrative Law Judge granted Respondent's motion for summary decision and dismissed the complaint. White petitioned the Administrative Review Board (ARB or Board) for review. Upon review, the ARB vacated the ALJ's order granting summary decision in favor of Respondent and remanded the case.¹ On remand, the case was assigned to another Administrative Law Judge (the ALJ), who held a full evidentiary hearing on May 6, 2014. Based on the record evidence, including the testimonies taken at the hearing, the ALJ found there is no credible evidence that White reported to James E. Parchman, Jr., White's supervisor, or to any manager *before* Parchman fired him, that he had refused to violate a safety rule as his trainers allegedly directed him to, or that Parchman knew of the alleged protected activity prior to firing White. The ALJ thus denied the complaint in her Decision and Order (May 7, 2015) (D. & O.). White appealed. For the following reasons, the Board summarily affirms the ALJ's decision.²

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the ARB authority to issue final agency decisions under the STAA and its implementing regulations.³ In reviewing a Department of Labor ALJ's STAA decision, the ARB is bound by the ALJ's factual findings if they are supported by substantial evidence.⁴ The ARB reviews the ALJ's conclusions of law *de novo*.⁵

¹ *White v. American Mobile Petroleum, Inc.*, ARB No. 12-058, ALJ No. 2011-STA-032 (ARB May 31, 2013).

² We affirm the ALJ's dismissal of White's claim but do not endorse the ALJ's analysis of every legal issue. Because we focus on the ALJ's finding that White failed to meet his burden to establish that he engaged in protected activity under the STAA, we make no determination regarding her rulings on other issues.

³ Secretary's Order No. 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); 29 C.F.R. § 1978.110(a).

⁴ 29 C.F.R. § 1978.110(b); *Jackson v. Eagle Logistics, Inc.*, ARB No. 07-005, ALJ No. 2006-STA-003, slip op. at 3 (ARB June 30, 2008) (citations omitted). In conducting our review, the ARB will uphold an ALJ's findings of fact to the extent they are supported by substantial evidence even if there is also substantial evidence for the other party, and even if the Board "would justifiably have made a different choice" had the matter been before us *de novo*." *Hirst v. Southeast Airlines, Inc.*, ARB Nos. 04-116, 04-160; ALJ No. 2003-AIR-047, slip op. at 6 (ARB Jan. 31, 2007); *Rooks v. Planet Airways, Inc.*, ARB No. 04-092, ALJ No. 2003-AIR-035, slip op. at 4 (ARB June 29, 2006).

DISCUSSION

Subsequent to the ARB's 2014 decision remanding this case, the ALJ held a full evidentiary hearing in 2015, during which she heard the testimony of several witnesses, including that of White and Parchman. In her D. & O., the ALJ analyzed the evidence and found that White's version of the events that led to his employment termination were not credible, were inherently inconsistent, and were contradicted by the credible testimony of record—specifically the testimony of Parchman, and by other evidence including the Department of Labor's investigator's report. D. & O. at 8-32. In a comprehensive 34-page opinion, the ALJ weighed the evidence and determined that there was no credible evidence that White had actually engaged in the STAA-protected activity he alleged that he engaged in and that he had told Parchman of this alleged protected activity before Parchman fired him.

Upon careful examination of the record evidence and the ALJ's Decision and Order, and having considered the parties' respective arguments on appeal, the Board finds that substantial evidence of record supports the ALJ's factual findings and legal conclusions, including her conclusion that White failed to establish that he actually engaged in the STAA-protected activity that he alleged he had engaged in. The ALJ thoroughly examined all of the testimonial and documentary evidence and rationally explained why she did not credit White's version of the events leading up to his discharge. The ALJ's factual findings, when supported by substantial evidence in the record, as is the case here, and credibility determinations, are afforded deference.⁶ Based on the foregoing, we affirm the ALJ's denial of White's complaint based on her conclusion that White did not engage in the STAA-protected activity that he alleged that he had engaged in.

⁵ *Olson v. Hi-Valley Constr. Co.*, ARB No. 03-049, ALJ No. 2002-STA-012, slip op. at 2 (ARB May 28, 2004) (citations omitted).

⁶ *See, e.g., Knox v. National Park Serv.*, ARB No. 10-105, ALJ No. 2010-CAA-002, slip op. at 5 (ARB Apr. 30, 2012) (“Because substantial evidence fully supports the ALJ’s factual findings and credibility determinations set out in the D. & O. . . . we afford deference to the ALJ.”).

CONCLUSION

The ALJ's May 7, 2015 Decision and Order denying White's complaint is **AFFIRMED**.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

LEONARD J. HOWIE
Administrative Appeals Judge