



In the Matter of:

MARTY LYNCH,

ARB CASE NO. 2017-0021

COMPLAINANT,

ALJ CASE NO. 2016-STA-00026

v.

DATE: DEC 12 2019

BEAULIEU GROUP, LLC,

RESPONDENT.

Appearances:

For the Complainant:

Marty Lynch; *pro se*; Dalton, Georgia

For the Respondent:

Peter N. Farley, Esq.; *McGuire Woods LLP*; Atlanta, Georgia

Before: James A. Haynes, Thomas H. Burrell, and Heather C. Leslie,
Administrative Appeals Judges.

FINAL DECISION AND ORDER

PER CURIAM. This case arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA) as amended.¹ Marty Lynch (Complainant) drove a truck for the Respondent from April 22, 2014 until his July 21, 2014 discharge. Complainant filed a complaint with the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) on October 28, 2014. He alleged that the Respondent violated the terms of the STAA by

¹ 49 U.S.C. § 31105 (2007) as implemented at 29 C.F.R. Part 1978 (2018); *see* 49 U.S.C. § 42121 (2000) (providing standards referenced in the STAA).

discharging him in retaliation for raising safety concerns that his assigned trucks had overinflated steer tires, exceeded weight limits, or lacked installed tire covers. Following an investigation, OSHA dismissed the complaint on February 25, 2016. Complainant objected to OSHA's determination and requested a hearing.

A Department of Labor Administrative Law Judge (ALJ) granted the Respondent's Motion for Summary Decision under 29 C.F.R. § 18.72 (2016) and cancelled the hearing. Order Granting Summary Decision And Cancelling Hearing (Jan. 24, 2017) (Order). The ALJ noted that Complainant had been placed on notice that, (1) when a respondent moves for summary decision because of a lack of evidence regarding an essential element of the complainant's case, the complainant is then required under Fed. R. Civ. P. 56 and 29 C.F.R. § 18.72 to present evidence demonstrating the existence of a genuine issue of material fact, and (2) if the complainant fails to present such evidence, then summary decision may be entered and the complainant's claims dismissed. *Id.* at 5; Notice Regarding Motions for Summary Decision (Dec. 20, 2016).

In opposition to the Respondent's motion, Complainant submitted a statement, titled a "Summary Decision/Judgement Rebuttle and Position Statement," (Statement) but presented, as the ALJ found, no evidence establishing the existence of a genuine dispute of material fact that tended to show that prior to his discharge he had engaged in protected activity by making a safety complaint or by refusing to drive because of a safety concern. Order at 5, 6, at 6 n.7, at 7, at 7 n.10. The ALJ further found that Complainant presented no evidence that would rebut the Respondent's evidence showing that Complainant was behind in completing his log books and that as a consequence the Respondent had prohibited him from driving until he completed them. The ALJ found that Complainant failed to do so in the time allotted and then stopped coming to work. In summary, the ALJ concluded that the Respondent was entitled to summary decision as a matter of law and granted the Respondent's motion. Complainant appealed.² We agree with the ALJ and will affirm his decision.

² Complainant submitted additional materials to the Board after we had rejected other filings due to the briefing schedule being closed and for lack of relevance to the issue presented by his appeal. *Order Rejecting Documents For Filing* (June 26, 2017).

JURISDICTION AND STANDARD OF REVIEW

The ARB has jurisdiction to review the ALJ's STAA decision pursuant to Secretary's Order No. 01-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13,072 (Apr. 3, 2019); 29 C.F.R. Part 1978. We review a decision granting summary decision *de novo*.³ We share the standard of review required of the ALJ and we also view the evidence presented in the light most favorable to Complainant (the non-moving party) to determine whether there are any genuine issues of material fact or whether the Respondent was entitled to judgment as a matter of law.⁴ Neither the ALJ nor the Board may weigh the evidence or determine the truth of the matter in dispute; our only task is to determine whether there is a genuine conflict as to any material fact for hearing.⁵

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³ *Hardy v. Mail Contractors of Am.*, ARB No. 2003-0007, 2002-STA-00022, slip op. at 2 (ARB Jan. 30, 2004).

⁴ *Lee v. Schneider Nat'l, Inc.*, ARB No. 2002-0102, ALJ No. 2002-STA-00025, slip op. at 2 (ARB Aug. 28, 2003). Further, we review complaints and papers filed by *pro se* complainants, such as the Complainant, "liberally in deference to their lack of training in the law and with a degree of adjudicative latitude." *Menefee v. Tandem Transp. Corp.*, ARB No. 09-046, ALJ No. 2008-STA-055, slip op. at 7 (ARB Apr. 30, 2010) (quotation omitted). But we are also mindful of our duty to remain impartial, and thus, we must refrain from becoming an advocate for the self-represented litigant. *See Cummings v. USA Truck, Inc.*, ARB No. 04-043, ALJ No. 2003-STA-047, slip op. at 2 (ARB Apr. 26, 2005). Similarly, an ALJ "must accord a party appearing *pro se* fair and equal treatment, but a *pro se* litigant cannot shift the burden of litigating his case to the courts, or avoid the risks of failure that may result from his decision to forego expert assistance." *Pik v. Credit Suisse, AG*, ARB No. 11-034, ALJ No. 2011-SOX-006, slip op. at 5 (ARB May 31, 2012) (quotation omitted) ("*Pro se* litigants have the same burdens of proving the necessary elements of their cases as litigants represented by counsel."). We conclude that the ALJ fully considered Complainant's *pro se* status. Order at 1-2.

⁵ *Franchini v. Argonne Nat'l Lab.*, ARB No. 2013-0081, ALJ No. 2009-ERA-00014, slip op. at 6 (ARB Sept. 28, 2015); *Henderson v. Wheeling & Lake Erie Ry.*, ARB No. 2011-0013, ALJ No. 2010-FRS-00012, slip op. at 9 (ARB Oct. 26, 2012).

DISCUSSION

An employee may engage in protected activity under the STAA by reporting violations of commercial motor vehicle safety rules or by refusing to operate a vehicle when such operation would violate those rules.⁶

Complainant, in his appeal, makes several arguments concerning his address and the apparent administrative error made by the ALJ's office and Respondent's counsel.⁷ We note that any error pertaining to Complainant's address has not prevented him from participating in his case either before the ALJ or during this appeal. As the ALJ noted, Complainant was able to defend the Motion for Summary Decision by submitting a Statement. It is not clear from the record or pleadings why Complainant did not submit any evidence in support of his general Statement. Regardless, any error surrounding his address has prejudiced neither Complainant's ability to defend against summary decision nor to bring this appeal.

The ALJ correctly found that in response to the Respondent's motion, Complainant submitted a general statement, but did not submit any evidence which tended to establish a genuine issue of material fact by showing that prior to his discharge he had engaged in any activity that the STAA protects. The ALJ determined that Complainant failed to raise a genuine issue of material fact as to whether anyone involved in his termination knew of any safety complaints or that he made any complaints concerning overweight trucks, overinflated tires; or that he was asked and/or refused to drive a truck with safety issues.⁸ In arguing that the

⁶ The STAA prohibits an employer from discharging, disciplining, or discriminating against an employee because the employee files a complaint related to a violation of a commercial motor vehicle safety or security regulation, standard, or order under 49 U.S.C. § 31105(a)(1)(A)(i), or when the employee refuses to operate a vehicle when the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security at 49 U.S.C. § 31105(a)(1)(B)(i).

⁷ Complainant also makes several allegations of general malfeasance against his prior attorney, Respondent's attorney, and against the ALJ. We only note that Complainant's general allegations against the attorneys of record and the ALJ are vague and unsupported and thus cannot be evaluated. We therefore decline to consider them.

⁸ The ALJ also granted summary decision on the grounds that the Respondent had established by clear and convincing evidence that it would have discharged Complainant in the absence of any protected activity on the basis that he stopped coming to work after the Respondent asked him to bring his log books up to date. Order at 6, 7.

ALJ's Order on appeal was erroneously decided, Complainant does not identify errors of law or fact in the record before us that would show that the ALJ's findings were wrong. Thus, upon de novo review of the ALJ's conclusion that the Respondent was entitled to summary decision as a matter of law, we hold that it is in accordance with law and consistent with the record before us. 29 C.F.R. § 18.72.

CONCLUSION

The ALJ properly concluded that the Respondent was entitled to summary decision as a matter of law. Accordingly, the ALJ's decision to GRANT the Respondent's motion for summary decision is **AFFIRMED** and the complaint is hereby **DENIED**.

SO ORDERED.

