U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

T.J. JACOBS,

COMPLAINANT,

v.

LIBERTY LOGISTICS, INC.,

RESPONDENT.

ARB CASE NO. 2017-0080

ALJ CASE NO. 2016-STA-00007

DATE: MAY - 9 2019

Appearances:

For the Complainant:
T.J. Jacobs; *pro se*; Jacksonville, Florida

For the Respondent:
Sheila Wilson; *lay representative*; Lilburn, Georgia

Before: William T. Barto, *Chief Administrative Appeals Judge*; James A. Haynes and Daniel T. Gresh, *Administrative Appeals Judges*

ERRATA

On April 30, 2019, the Administrative Review Board issued a Final Decision and Order (D. & O.) affirming the ALJ's conclusion that Respondent did not violate the STAA and denying the complaint. On page two, line three of the D. & O., the Board inadvertently misstated the judge's gender as "he" instead of "she." Accordingly, we hereby reissue the Final Decision and Order to correct the judge's gender as "she" on page two, line three. In all other respects, the D. & O. remains unchanged.

SO ORDERED.

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FINAL DECISION AND ORDER

PER CURIAM. T.J. Jacobs, the Complainant, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) on July 29, 2015. Jacobs alleged that the Respondent, his employer Liberty Logistics, Inc., violated the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and re-codified, when it terminated his employment in retaliation for his having raised safety concerns.[1] The STAA prohibits employers from discriminating against employees when they report violations of commercial motor vehicle safety rules or when they refuse to

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[1] 49 U.S.C. § 31105 (2007) as implemented at 29 C.F.R. Part 1978 (2018); *see* 49 U.S.C. § 42121 (2000).

operate a vehicle when such operation would violate those rules.[2] A Department of Labor (DOL) Administrative Law Judge (ALJ) dismissed the complaint after a hearing because she found that Complainant failed to prove by a preponderance of the evidence that Respondent took adverse action against him. On appeal, we summarily affirm the ALJ's Decision and Order (D. & O.).

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Administrative Review Board authority to hear appeals from ALJ decisions and issue final agency decisions in cases arising under the STAA.[3] The ARB reviews questions of law presented on appeal de novo, but is bound by the ALJ's factual determinations as long as they are supported by substantial evidence.[4] We uphold an ALJ's credibility determinations unless they are "inherently incredible or patently unreasonable."[5]

DISCUSSION

STAA complaints are governed by the legal burdens of proof set forth in the employee protection provision of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21).[6] To prevail on a STAA claim, an employee must prove by a preponderance of the evidence that his employer, in

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2 49 U.S.C.A. § 31105(a)(1)(B)(i).

3 Secretary's Order No. 1-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13072 (Apr. 3, 2019).

4 *Palmer v. Canadian Nat'l Ry. / Ill. Cent. R.R. Co.*, ARB No. 16-0035, ALJ No. 2014-FRS-00154, slip op. at 14 (Sep. 30, 2016) (reissued with full dissent, Jan. 4, 2017); *see also* 29 C.F.R. § 1978.110(b).

5 *Kirk v. Rooney Trucking Co.*, ARB No. 2014-0035, ALJ No. 2013-STA-00042, slip op. at 3 (ARB Nov. 18, 2015) (quoting *Mizusawa v. United Parcel Serv.*, ARB No. 2011-0009, ALJ No. 2010-AIR-00011, slip op. at 3 (ARB June 15, 2012) (quoting *Jeter v. Avior Tech. Ops., Inc.*, ARB No. 2006-0035, ALJ No. 2004-AIR-00030, slip op. at 13 (ARB Feb. 29, 2008))).

6 49 U.S.C. § 31105(b)(1); *see* 49 U.S.C.A. § 42121.

relevant part, took an adverse employment action against him.[7] If the employee fails to prove this requisite element, the entire claim fails.[8]

In light of our disposition of this matter, we limit our discussion to the issue of whether the Complainant was terminated from his employment or voluntarily resigned.[9] The ALJ found that Complainant resigned from his job when he gave Respondent a so-called "Notice of Rescission" letter, in which Complainant said he was terminating "any and all agreements" between his employer and himself. The letter also purported to preserve the Respondent's obligation to pay him. The content of Complainant's Notice of Rescission letter persuaded the ALJ that Complainant had voluntarily resigned his employment. D. & O. at 18-20. Although Complainant asserted in his testimony that he did not resign and that the letter meant something else, the ALJ did not find that testimony credible.[10] *Id.* at 19.

CONCLUSION

As substantial evidence supports the ALJ's factual determination that Respondent did not take any adverse action against Complainant, we **AFFIRM** the ALJ's conclusion of law that Respondent did not violate the STAA. Accordingly, the complaint in this matter is **DENIED**.[11]

SO ORDERED.

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7 49 U.S.C.A. § 42121(b)(2)(B)(iii).

8 *Mauldin v. G & K Servs.*,ARB No. 16-059, ALJ No. 2015-STA-054, slip op. at 4 (ARB June 25, 2018).

9 We affirm the ALJ's findings and conclusions regarding the Complainant's other allegations of error because they are supported by substantial evidence and by applicable law.

10 *See Kirk,* ARB No. 2014-0035, slip op. at 3.

11 29 C.F.R. § 1978.110(e).