

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 01 August 2008**

CASE NO.: 2008-STA-00050

In the Matter of

**THOMAS JEFFREY LOLLAR,**  
Complainant,

v.

**MELVIN HICKS TRUCKING, INC.,**  
Respondent.

Appearances:

Complainant pro se

Joel Ben Parris, Esquire for Respondent

Before:

Janice K. Bullard  
Administrative Law Judge

**ORDER GRANTING COMPLAINANT'S MOTION TO WITHDRAW  
COMPLAINT AND REQUEST FOR HEARING; CANCELLING HEARING;  
AND RECOMMENDED DECISION AND ORDER  
DISMISSING COMPLAINT WITH PREJUDICE**

This proceeding arises under the employee protection provisions of the Surface Transportation Assistance Act, 49 U.S.C. § 31105 ("the Act" or "STAA" hereinafter), and implementing regulations set forth at 29 C.F.R. part 1978. The pertinent provisions of the Act prohibit the discharge, discipline, or discrimination of employees who refuse to operate a commercial motor vehicle because of apprehension of serious injury due to unsafe conditions or health matters. This decision and order is also governed by those provisions, and the provisions of 29 C.F.R. Part 18.

**Procedural Background**

On November 21, 2007, Jeff Lollar ("Complainant") file a complaint with the Secretary of Labor, Occupational Safety and Health Administration (OSHA), alleging that he had been discriminated against in violation of the STAA when on November 12, 2007 he was discharged

from his employment with Melvin Hicks Trucking, Inc. (“Respondent”). OSHA conducted an investigation into Complainant’s allegations and on April 21, 2008, issued findings that concluded that Complainant had not been discharged in reprisal for protected activity.

On May 18, 2008, Complainant timely appealed OSHA’s determination and requested a hearing before the Office of Administrative Law Judges (“OALJ”). The case was assigned to me, and by Notice issued May 19, 2008, I scheduled a hearing to commence on June 24, 2008 in Atlanta, Georgia. As that date approached with neither party entering appearance by counsel, I asked my legal assistant to contact the parties regarding the status of the matter. Respondent’s attorney entered an appearance on June 13, 2008, and asked that the hearing commence at 1:00 o’clock on the scheduled date, rather than at 9:00 a.m. When Complainant did not respond, my legal assistant reached him by telephone, and arranged for a telephonic conference call.

On Friday, June 13, 2008, I held a conference with Complainant and counsel for Respondent by telephone. During the conference, Complainant advised that he was in the process of engaging counsel, and also had requested documents from OSHA relating to the agency’s investigation of his complaint. He asked for additional time to obtain both. By Order issued June 16, 2008, I summarized the telephone conference discussion and re-scheduled the hearing for Tuesday, August 5, 2008 at 9:00 a.m. in Atlanta Georgia.

On July 29, 2008, Respondent filed a pre-hearing statement in compliance with my pre-hearing Order. On July 29, 2008, Complainant sent e-mail correspondence to my legal assistant, which stated in the entirety:

I regret to inform you that I am not going to be able to peruse [sic] any legal action against Melvin Hicks/Melvin Hicks Inc. I have not been able to obtain adequate legal representation.

Thank you for your time

A copy of that e-mail is in the record at ALJX 1, and a paper copy is hereby provided to Respondent together with this Order and Recommended Decision and Order.

Because of the impending date of the hearing, the ambiguity of the content of the e-mail correspondence, and my office’s history of difficulty with mail communication with Complainant, I asked my legal assistant to arrange a telephone conference with Complainant and Respondent’s counsel.

On July 30, 2008, at 2:00 p.m. o’clock, I held a telephone conference with Complainant and counsel for the Respondent. I advised Complainant that he did not need an attorney, although I acknowledged that counsel would be potentially helpful to his case. Complainant advised that he was aware that he could go forward without a lawyer, but had experienced a recent crisis with his health and had been advised by his doctor to reduce stress. Complainant explained that he recently had suffered a heart attack. Complainant was on a cell phone outside

his doctor's office during the telephone conference. Complainant believed that it would be too stressful for him to engage in litigation. Complainant was not interested in continuing the hearing, but wished to withdraw his complaint. I advised Complainant that a withdrawal would mean the final resolution of the matter, and that he would not be able to resurrect his complaint in the future. Complainant acknowledged that he understood that by withdrawing his complaint, the case would be dismissed. He again confirmed that he did not wish to pursue his complaint. I advised that I would issue an Order granting Complainant's request to withdraw his complaint and dismissing his complaint with prejudice. I explained to Complainant that "with prejudice" meant that he could not revisit the complaint at a future time. Complainant again confirmed that he believed that withdrawal of the complaint was in his best interests. Respondent did not object.

### Conclusion

I find from my discussion with Complainant that his motion to withdraw his complaint is voluntary. I further find that Complainant understands the consequences of his decision. In consideration of the circumstances involved, I find it appropriate to GRANT Complainant's motion to withdraw his complaint and request for hearing. Accordingly, I recommend that his complaint be DISMISSED, with prejudice.

The hearing presently scheduled to commence on August 5, 2008 is hereby canceled.

So ORDERED.

A

Janice K. Bullard  
Administrative Law Judge

Cherry Hill, New Jersey