



**In the Matter of:**

**FRANCES HOPKINS,**

**ARB CASE NO. 06-098**

**COMPLAINANT,**

**ALJ CASE NO. 2006-STA-014**

**v.**

**DATE: November 30, 2006**

**SUGAR MOUNTAIN  
TRANSPORTATION CO.,**

**and**

**LARRY TACHOVSKY,**

**RESPONDENTS.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**FINAL DECISION AND ORDER**

Francis Hopkins filed a whistleblower complaint with the United States Department of Labor alleging that his employer, Sugar Mountain Transportation Co., and its owner, Larry Tachovsky, violated the employee protection provisions of the Surface Transportation Assistance Act (STAA).<sup>1</sup> The STAA prohibits certain employers from retaliating against employees who complain about or report violations of commercial motor vehicle safety requirements.<sup>2</sup> Hopkins alleged that he was fired shortly after he voiced concerns about his company truck's radiator and front end alignment.

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<sup>1</sup> 49 U.S.C.A. § 31105 (West 1997).

<sup>2</sup> "A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because . . . the employee, or another person at the employee's request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety regulation, standard, or order, or has testified or will testify in such a proceeding . . . ." 49 U.S.C.A. § 31105(a)(1)(A). (West 1997).

After investigating Hopkins's allegations, the Occupational Safety and Health Administration (OSHA) found that Sugar Mountain and Tachovsky did not violate the STAA.<sup>3</sup> Hopkins objected to the OSHA finding and requested a hearing.<sup>4</sup> The Department of Labor's Office of Administrative Law Judges scheduled the hearing for June 7, 2006. But on or about April 26, 2006, Hopkins, through his attorney, moved to dismiss the proceedings because Tachovsky was insolvent and because "it is not in [the] interest of judicial economy, nor is it worth expending funds to pursue an insolvent Respondent." The ALJ recommended that we dismiss Hopkins's request for a hearing and affirm OSHA's finding that Sugar Mountain and Tachovsky did not violate the STAA. In so doing, the ALJ relied upon 29 C.F.R. § 1978.111(c), which permits a party to withdraw his objections to the OSHA finding at any time before that finding becomes final.

The Secretary of Labor has delegated to the Administrative Review Board the authority to issue final agency decisions under the STAA and the implementing regulations at 29 C.F.R. Part § 1978.<sup>5</sup> We automatically review an ALJ's recommended STAA decision.<sup>6</sup> Since the ALJ properly applied 29 C.F.R. § 1978.111(c) in dismissing Hopkins's request for a hearing, we **AFFIRM** that decision and the OSHA finding that neither Sugar Mountain nor Tachovsky violated the STAA.

**SO ORDERED.**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

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<sup>3</sup> OSHA Letter dated February 10, 2006. OSHA investigates STAA complaints and issues findings as to whether there is reasonable cause to believe that the employer has violated the STAA. If reasonable cause does exist, OSHA accompanies that finding with a preliminary order that provides certain prescribed relief. 29 C.F.R. §§ 1978.103, 1978.104. (2006).

<sup>4</sup> See 29 C.F.R. § 1978.105(a). Unless a party files a timely objection to OSHA's findings or preliminary order or both, the findings or preliminary order become final. 29 C. F. R. § 1978.105(b) (2).

<sup>5</sup> See Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002).

<sup>6</sup> 29 C.F.R. § 1978.109(a).