



In the Matter of:

CLYDE MYERS,

ARB CASE NO. 08-002

COMPLAINANT,

ALJ CASE NO. 2007-STA-025

v.

DATE: October 16, 2007

**SUNSTONE II LP,
dba SUNSTONE TRUCKING and
GEORGE JACKSON,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND DISMISSAL ORDER

Clyde Myers complained that Sunstone Trucking violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified,¹ and its implementing regulations,² when it constructively discharged and discriminated against him. After a full investigation, the Occupational Safety and Health Administration (OSHA) found that there was no reasonable cause to believe that Sunstone violated the STAA.³ Myers objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).⁴

¹ 49 U.S.C.A. § 31105 (West 1997). Section 405 of the STAA provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would violate those rules. Congress has amended the STAA since Myers filed his complaint. *See* Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). Even if the amendments were applicable to this complaint, they would not affect our decision.

² 29 C.F.R. Part 1978 (2007).

³ *See* 29 C.F.R. § 1978.103.

The ALJ scheduled the case for hearing, but on August 16, 2007, Sunstone's counsel filed signed copies of Complainant's Notice of Withdrawal of Objections to the Secretary's Findings and Request for Dismissal. On August 27, 2007, the ALJ issued a Recommended Order Approving Withdrawal of Objections and Dismissing Claim. The ALJ noted that pursuant to 29 C.F.R. § 1978.111(c), at any time before the Secretary's findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge, and the judge shall determine whether to approve the withdrawal. The ALJ found, "Given that Complainant's request to withdraw his objections to the Secretary's findings and for dismissal of his case appears voluntary, and that Respondent does not object, Complainant's request to withdraw his objections and for dismissal of his case is hereby APPROVED."⁵ Accordingly, the ALJ reinstated the Secretary's findings and dismissed the complaint with prejudice.

The ALJ forwarded her recommended decision and the administrative record to the Administrative Review Board (ARB) and the case is now before us pursuant to the STAA's automatic review provisions.⁶ The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.⁷ When reviewing STAA cases, the ARB is bound by the ALJ's factual findings if those findings are supported by substantial evidence in the record considered as a whole.⁸ In reviewing the ALJ's legal conclusions, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making the initial decision . . ."⁹ Therefore, the Board reviews the ALJ's legal conclusions de novo.¹⁰

The ALJ's recommended order complies with applicable STAA statutory and regulatory provisions. Consistent with 29 C.F.R. § 1978.111(c), the ALJ (1) recommended that Myers's claim be dismissed based on his withdrawal of his objections to OSHA's denial of his STAA complaint, and (2) reinstated those findings denying his complaint.

⁴ See 29 C.F.R. § 1978.105.

⁵ *Myers v. Sunstone II LP*, 2007-STA-025, slip op. at 1 (Aug. 27, 2007).

⁶ See 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1).

⁷ Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

⁸ 29 C.F.R. § 1978.109(c)(3); *BSP Trans, Inc. v. U.S. Dep't of Labor*, 160 F.3d 38, 46(1st Cir. 1998); *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d 41, 44 (2d Cir. 1995).

⁹ 5 U.S.C.A. § 557(b) (West 1996).

¹⁰ See *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

Accordingly, we **GRANT** Myers's request to withdraw his objections to OSHA's findings and **AFFIRM** those findings denying his complaint as provided in 29 C.F.R. § 1978.111(c).

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge