



**In the Matter of:**

**JOHN ALLEN PETERS,**

**ARB CASE NO. 02-045**

**COMPLAINANT,**

**ALJ CASE NO. 2002-STA-2**

**v.**

**DATE: July 30, 2003**

**HAL INDUSTRIES,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

*John Allen Peters, pro se, Griffin, Georgia*

*For the Respondent:*

*Connie Conley, Hal Industries, Trenton, Florida*

### **FINAL DECISION AND ORDER**

This case arises under the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and recodified, 49 U.S.C.A. § 31105 (West 1997). Complainant John Allen Peters alleges that his employer, Respondent Hal Industries, violated the STAA when it discharged him because he refused to drive an unsafe vehicle. A Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order in which he concluded that Peters had failed to sustain his burden of establishing that Respondent discharged him because of protected activity. *Peters v. Hal Industries*, 2002-STA-2 (ALJ Mar. 25, 2002) (R. D. & O.). Peters requested review of this R. D. & O. For reasons stated herein, we affirm the ALJ's R. D. & O.

### **BACKGROUND**

The ALJ's R. D. & O. contains a complete recitation of the facts and evidence that we

summarize briefly for purposes of this decision.<sup>1</sup>

At all relevant times, the Respondent operated as a trash hauler and the Complainant drove a truck transporting garbage. TR 7.<sup>2</sup> Connie Conley was the Respondent's manager and had the responsibility for hiring and firing employees and dispatching trucks. TR 36.

On June 19, 2000, the Complainant was driving a truck that broke down and prevented him from completing his route. Conley told him that he would be able to drive a leased truck the following day. TR 9, 10. However, when he arrived for work at 4:30 a.m. on June 20, 2000, he found a note from Conley in his route book assigning him Truck No. 540, the smallest and oldest truck in the Respondent's fleet. TR 10. The Complainant testified that when he "pre-tripped" the truck, he found that it had slick tires, a front tire low on air, bad brakes, bad steering and a broken dumpster lock. TR 10. He then called Conley at home and asked for sick leave. TR 21-22. She told him that he was not sick. TR 49. The Complainant testified that he told her that he was not driving that "unsafe piece of junk." TR 19. Conley denies that he made that statement. TR 70. Although the Complainant told Conley he would not drive "that hunk of junk" he did not mention any specific defects with the truck. TR 19, 54. Conley informed the Complainant that if he refused to drive the truck he was fired. TR 19. He went home and she fired him the next day, providing him with a termination letter that he refused to sign. TR 22, 55.

The Complainant had reported mechanical defects in other trucks previously by submitting Driver Vehicle Inspection Reports. CEX 1. However, he had not submitted a Driver Vehicle Inspection Report for Truck No. 540. TR 13. The last time he drove Truck No. 540 was four or five months previously. TR 12.

## **JURISDICTION AND STANDARD OF REVIEW**

The Secretary of Labor's jurisdiction to decide this matter by authority of 49 U.S.C.A. § 31105(b)(2)(C) has been delegated to the Administrative Review Board ("ARB" or "Board"). See Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002). See also 29 C.F.R. § 1978.109(c)(2002).

When reviewing STAA cases the ARB is bound by the ALJ's factual findings if those findings are supported by substantial evidence on the record considered as a whole. 29 C.F.R. § 1978.109(c)(3); *BSP Trans, Inc. v. United States 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). Substantial evidence is that which is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clean Harbors Env'tl. Servs., Inc. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998) (quoting *Richardson v. Perales*, 402 U.S. 389, 401

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<sup>1</sup> An electronic copy of the ALJ's R. D. & O. is located at <http://www.oalj.dol.gov/public/wblower/decsn/02sta02a.htm>.

<sup>2</sup> Citations to the record are as follows: Recommended Decision and Order (R. D. & O. \_\_\_\_); Hearing Transcript (TR \_\_\_\_); Complainant Exhibit (CEX \_\_\_\_).

(1971)).

In reviewing the ALJ's conclusions of law, the Board, as the designee of the Secretary, acts with "all the powers [the Secretary] would have in making the initial decision . . ." 5 U.S.C.A. § 557(b) (West 1996). Therefore, the Board reviews the ALJ's conclusions of law de novo. *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

### ISSUE

We consider whether the ALJ correctly held that Peters had failed to sustain his burden of establishing that Respondent discharged him because of protected activity.

### DISCUSSION

The STAA, 49 U.S.C.A. § 31105(a), prohibits discrimination against truck drivers for engaging in specified activities:

(a) Prohibitions – (1) A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment because –

...

(B) the employee refuses to operate a vehicle because –

- (i) the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety or health; or
- (ii) the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle's unsafe condition.

(2) Under paragraph (1)(B)(ii) of this subsection, an employee's apprehension of serious injury is reasonable only if a reasonable individual in the circumstances then confronting the employee would conclude that the unsafe condition establishes a real danger of accident, injury, or serious impairment of health. To qualify for this subsection, the employee must have sought from the employer, and been unable to obtain, correction of the unsafe condition.

To prevail on a claim under the STAA, a complainant must demonstrate that he engaged in protected activity, that his employer was aware of the protected activity, that the employer discharged, disciplined or discriminated against him, and that there was a causal connection

between the protected activity and the adverse action. *Eash v. Roadway Express, Inc.*, ARB Nos. 02-008 and 02-064, ALJ No. 2000-STA-47, slip op. at 3 (ARB June 27, 2003). *See also BSP Trans., Inc. v. United States Dep't of Labor*, 160 F.3d 38, 45 (1st Cir. 1998); *Clean Harbors Env't'l Servs., Inc. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998); *Yellow Freight Sys., Inc. v. Reich* 27 F.3d 1133, 1138 (6th Cir. 1994); *Moon v. Transport Drivers, Inc.*, 836 F.2d 226, 228 (6th Cir. 1987).

If the employer presents evidence of a nondiscriminatory reason for the adverse employment action, the burden of producing evidence then returns to a complainant to prove, by a preponderance of the evidence, that discrimination was the true reason for the adverse action. *Eash*, ARB Nos. 02-008 and 02-064, slip op at 4. *See also St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 507 (1993); *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981).

In the present matter, the ALJ found that the Complainant engaged in protected activity when he reported mechanical defects in the Respondent's trucks. However, the ALJ concluded that the Complainant failed to prove by a preponderance of the evidence that the Respondent discharged him because of his protected activity:

Complainant did not inform Ms. Conley of the vehicle's defects but merely claimed, without explanation, that he was sick. . . . I find Ms. Conley's testimony credible that complainant did not state that the truck was "an unsafe piece of junk." Assuming *arguendo* that complainant made such a statement, it was very vague and did not sufficiently communicate any defects to have motivated respondent to fire him . . . . Instead, the evidence indicates that respondent dismissed complainant because of insubordination for his unjustified refusal to drive the truck assigned to him.

R. D. & O. at 3.

We have reviewed the record and find that the ALJ's factual findings are supported by substantial evidence on the record as a whole and are therefore conclusive. 29 C.F.R. § 1978.109(c)(3). The record also supports the ALJ's thorough, well-reasoned legal conclusions.

The Complainant submitted a statement in support of his appeal to the Board which raises three issues. We address those in turn. First, Peters claims that a decision issued in connection with his State of Florida unemployment compensation case establishes that he was discharged for complaining about the condition of Truck No. 540. Response from John Allen Peters at 1. Although the ALJ did not address this document, admitted as CEX 2, we find that it does not require us to alter the ALJ's conclusions. In STAA whistleblower cases, deference is paid to the findings of another government agency made in proceedings brought under different statutes only in limited circumstances. 29 C.F.R. § 1978.112. *See also Nichols v. Gordon Trucking, Inc.*, 97-STA-2 (ARB July 17, 1997). The Florida unemployment compensation Appeals Referee concluded that Peters was employed by AMS Staff Leasing Inc., a temporary help firm, and that

Peters was entitled to unemployment compensation benefits because, after the June 20, 2000 discharge, AMS failed to instruct Peters to report for reassignment as required by Florida law. CEX 2. However, at the STAA hearing, Conley testified that Hal Industries was owned by Preling Industries (TR 34) and that Preling Industries merely used AMS Staff Leasing to handle its payroll and workers' compensation. TR 37. Under those facts, AMS Staff Leasing was not the Complainant's employer. We therefore accord no weight to the finding in his unemployment compensation claim.

The Complainant also argues that the ALJ erred in finding Conley a more credible witness. The ALJ's credibility determination was based upon the opportunity for him to evaluate the witnesses in person. Such evaluations may be accorded exceptional weight by a reviewing court, *NLRB v. Cutting, Inc.*, 791 F.2d 659, 663 (7th Cir. 1983). We will not reverse an ALJ's credibility determinations in a STAA case where, as here, they are supported by substantial evidence. *Johnson v. Roadway Express, Inc.*, ARB No. 99-111, ALJ No. 1999-STA-5, slip op. at 8-9 (ARB Mar. 29, 2000).

Finally, the Complainant argues that the ALJ refused to accept into evidence additional copies of Driver Vehicle Inspection Reports. While the ALJ rules of practice permit the introduction of all relevant evidence, 29 C.F.R. § 18.402, the rules also provide for the exclusion of material which is a "waste of time, or needless presentation of cumulative evidence." 29 C.F.R. § 18.403. The Complainant sought to introduce additional copies of Driver Vehicle Inspection Reports to establish "the total disregard for safety by mechanic But [sic] Conley and supervisor Connie Conley." Response from John Allen Peters at 1. However, the issue before the ALJ was not the Respondent's safety record but whether the Complainant established that the Respondent discharged him in retaliation for his protected activity. The ALJ found, and we agree, that the Complainant engaged in protected activity by submitting the Driver Vehicle Inspection Reports. However, the Complainant testified at the hearing that he had not driven Truck No. 540 in four or five months. Having not driven this vehicle in that period, the Complainant could not have submitted a Driver Vehicle Inspection Report regarding mechanical defects in the vehicle. The Complainant testified to this fact at the hearing. TR 13. In light of these facts we find that the ALJ did not err in not accepting the other Driver Vehicle Inspection Reports.

Accordingly, we adopt the findings of fact and conclusions of law in the attached ALJ's Recommended Decision and Order and deny Peters' complaint.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

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