



**Issue Date: 05 January 2015**

**Case No.: 2014-SPA-00003**

**In the Matter of:**

**CLINTON BONDS,  
Complainant**

**v.**

**TURN SERVICES, INC.,  
Respondent**

**ORDER ON MOTION FOR SUMMARY DECISION**

This proceeding arises from a claim brought under the employee protection provisions of the Seaman's Protection Act<sup>1</sup> (the Act) by Complainant against Respondent. The case concerns Complainant's claim that Respondent fired him for reporting to the Coast Guard his concern that the captain of his vessel may have been under the influence of alcohol. Respondent argues in reply that Complainant was fired for insubordination, not for calling the Coast Guard. The Occupational Health and Safety Administration considered his claim but dismissed it, finding no indication that Respondent had any knowledge about the alleged protected communication when it fired him. Complainant, through his counsel, filed a timely objection and demand for a *de novo* hearing.

After scheduling calls setting a schedule for motions and the hearing for 7 Jan 15, Respondent filed a motion for summary decision, maintaining that there was no evidence to raise a genuine issue of material fact that would allow the finder of fact to determine that Respondent knew about Complainant's call when it fired him. When Complainant missed the deadline for filing his response, I conducted a conference call with both counsel.

Respondent's counsel indicated she was supplementing her motion with an affidavit from the person who fired Complainant stating that he knew nothing about a phone call to the Coast Guard. Complainant's counsel candidly explained that he had not filed a response because he had nothing to offer that would create a genuine issue of material fact that would enable him to argue that Respondent was aware of the alleged protected activity when it took the adverse action against his client. When I emphasized that his concession would result in my granting the motion and dismissing his client's claim; he stated he was aware of that, but given the evidence, had no choice.

---

<sup>1</sup> 46 U.S.C. § 2114, as amended by Section 611 of the Coast Guard Authorization Act of 2010, P.L. 111-281.

The Act provides, in part:

(a)(1) A person may not discharge or in any manner discriminate against a seaman because—

(A) the seaman in good faith has reported or is about to report to the Coast Guard or other appropriate Federal agency or department that the seaman believes that a violation of a maritime safety law or regulation prescribed under that law or regulation has occurred;<sup>2</sup>

A complaint under the Act is subject to the procedures, requirements, and rights described in the employee protections provision of the Surface Transportation Assistance Act,<sup>3</sup> which in turn states that whistleblower complaints will be governed by the legal burdens of proof set forth in the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (AIR21).<sup>4</sup> AIR21 requires complainants to establish that the person making the adverse employment decision had knowledge of the protected activity.<sup>5</sup>

In this case, Respondent submits and Complainant concedes that there is no evidence that would allow a finding that the person making the adverse employment decision had knowledge of the protected activity. Consequently, the claim fails and is dismissed.

In view of the foregoing, the hearing scheduled on **7 Jan 15** is hereby **CANCELLED**.

**SO ORDERED.**

**PATRICK M. ROSENOW**  
**Administrative Law Judge**

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

---

<sup>2</sup> 46 U.S.C. § 2114.

<sup>3</sup> 49 U.S.C. § 31105.

<sup>4</sup> 49 U.S.C. § 42121(b).

<sup>5</sup> *Peck v. Safe Air Int'l, Inc.*, ALJ No. 2001-AIR-3 (ARB Jan. 30, 2004).

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1986.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1986.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1986.110(a).

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1986.109(e) and 1986.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1986.110(b).