



Issue Date: 06 June 2008

In the Matter of
Virgil Myers
Complainant

v.

Case Number 2008 STA 00037

G-n-S Astle Trucking, Inc.
Respondent

DECISION AND ORDER

RE:COMPLAINANT'S MOTION TO DISMISS

This matter arises under the employee protection provisions of section 405 of the Surface and Transportation Assistance Act of 1982, 49 U.S.C. § 31105 (hereinafter the "STAA"), with its implementing regulations found at 29 C.F.R. Part 1978.

The Complaint in this matter was issued April 7, 2008. On May 20, 2008, the Complainant requested cancellation of the hearing in this matter and advised in writing that a Motion to Dismiss was pending. The Complainant requests a withdrawal on the grounds that Respondent is judgment proof. The Respondent has not responded.

The regulations do not permit withdrawal of a complaint. They only allow withdrawal of objections to the Secretary's preliminary findings. 29 C.F.R. § 1978.111(c). Thus, the proper procedure in this circumstance is to construe the Complainant's request to withdraw his complaint as a withdrawal of objections to the Secretary preliminary findings. *Mysinger v. Rent-A-Driver*, 90-STA-23 (Sec'y Sept. 21, 1990). When such withdrawal occurs, an order affirming "any portion of the findings or preliminary order with respect to which the objection was withdrawn" must be issued. 29 C.F.R. § 1978.111(c). If

the case is before OALJ, my order becomes the final administrative order in the case. *Shown v. Wilson Truck Corp.*, 92-STA-6 (Sec'y Apr. 30, 1992). Consequentially, I reinstate and affirm the Secretary's preliminary findings. Accordingly,

ORDER

IT IS HEREBY ORDERED that:

1. Pursuant to 29 C.F.R § 1978.111(c), the Secretary's findings are **REINSTATED** and **AFFIRMED**.
2. The above-captioned claim is **DISMISSED** without prejudice.

A

DANIEL F. SOLOMON
Administrative Law Judge