

U.S. Department of Labor

Office of Administrative Law Judges
36 E. 7th St., Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)



Issue Date: 06 February 2009

Case No. 2009-STA-9

In the Matter of

MICKEY WARD,

Complainant,

v.

PIKE COUNTY NON-PROFIT BOARD, aka
PIKE COUNTY ADULT ACTIVITIES CENTER,
d/b/a CANAL INDUSTRIES,

Respondent.

**RECOMMENDED ORDER APPROVING WITHDRAWAL OF OBJECTION TO OSHA'S
FINDINGS AND RECOMMENDED ORDER APPROVING OSHA'S FINDINGS**

This proceeding arises under the employee protection provisions of 49 U.S.C. Section 31105 of the Surface Transportation Assistance Act (STAA), and the applicable regulations issued thereunder at 29 C.F.R. Part 1978. On November 12, 2008, the United States Department of Labor's Occupational Safety and Health Administration ("OSHA") Area Director, issued his findings on a complaint filed by Mickey Ward against Pike County Non-Profit Board, a/k/a Pike County Adult Activities Center, d/b/a Canal Industries, in which he concluded that there was no reasonable cause to believe that Respondent violated 49 U.S.C. § 31105.

In response to OSHA's Area Director's determination, the Complainant appealed the findings, by letter, dated December 12, 2008, and requested a hearing before an administrative law judge. The above-captioned matter is currently pending before me. By letter dated January 19, 2009, Complainant's attorney, states: "Complainant Mickey Ward hereby withdraw[s] his appeal in the above-reference[d] matter."

Twenty-nine C.F.R. Section 1978.111(c) governs withdrawals of STAA complaints. The regulation specifically states:

At any time before the 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 or, if the case is on review, with the Administrative Review Board, United States Department of Labor. The judge or the Administrative Review Board, United States Department of Labor, as the case may be, shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.

Complainant's request to withdraw his appeal is tantamount to a request to withdraw any objection to OSHA's findings. *Thompson v. Inland Northwest Dairies, LLC*, ARB No. 07-085, ALJ No. 2007-STA-31 (ARB July 31, 2007).

RECOMMENDED ORDER

Accordingly, **IT IS HEREBY RECOMMENDED** that Complainant's request to withdraw his objection to OSHA's findings be granted and OSHA's findings be affirmed.

A

LARRY S. MERCK
Administrative Law Judge

Notice of Review: The administrative law judge's Recommended Order Approving Withdrawal of Objections and Dismissing Claim, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. See 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Order Approving Withdrawal of Objections and Dismissing Claim, the parties may file briefs with the Administrative Review Board ("Board") in support of, or in opposition to, the administrative law judge's order unless the Board, upon notice to the parties, establishes a different briefing schedule. See 29 C.F.R. § 1978.109(c)(2).

All further inquiries and correspondence in this matter should be directed to the Board.