



Issue Date: 17 February 2010

Case No.: 2009-STA-00020

In the matter of:

TERENCE WHEAT (*pro se*),

Complainant,

v.

GAINNEY TRANSPORTATION SERVICES, INC.,

Respondent.

ORDER OF DISMISSAL

This proceeding arises from a complaint filed under the provisions of Section 31105 of the Surface Transportation Assistance Act of 1982, U.S. Code, Title 49, § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 (“STAA”) and is governed by the implementing Regulations found in the Code of Federal Regulations, Title 29, Part 1978 and Part 18. The claim was referred to the Office of Administrative Law Judges for formal hearing upon appeal by Complainant of the Occupational Safety and Health Administration January 26, 2009, determination that the Complainant’s protected activity was not a contributing factor in his discharge on January 2, 2008.

On March 18, 2009, Respondent’s counsel filed notice that the Respondent Corporation had commenced voluntary proceedings under Chapter 11 of the U.S. Bankruptcy Code on October 14, 2008, in the U.S. Bankruptcy Court for the Western District of Michigan. Review of the case docket for the U.S. Bankruptcy Court for the Western District of Michigan¹ reveals that on October 14, 2008, bankruptcy petitions were filed by “Gainey Corporation and other related corporate entities”² which included the Respondent Corporation. The cover case number for the

¹ www.miwb.uscourts.gov; U.S. Bankruptcy Court for the Western District of Michigan, One Division Ave., Room One, Grand Rapids, MI 49503-3132; telephone number (616) 456-2693

² The debtors filing in bankruptcy were Gainey Corporation (Case No. 08-09092), Gainey Transportation Services, Inc. (Case No. 08-09094), Super Service, Inc. (Case No. 08-09096), Freight Brokers of America, Inc. (Case No. 08-09109), Lester Coggins Trucking, Inc. (Case No. 08-09095), and Gainey Insurance Services, Inc. (Case No. 08-09097).

petition involved is Case No. GG 08-09092, before Chief United States Bankruptcy Judge James D. Gregg.

By Order issued March 24, 2009, this Administrative Law Judge stayed further proceeding in the above captioned matter and directed the Respondent to immediately file the Final Order of the U.S. Bankruptcy Court, as it relates to Respondent Corporation, upon receipt of said Final Order.

On February 16, 2010, Respondent's counsel filed with the Court a copy of the Honorable James D. Gregg's "Findings of Fact, Conclusions of Law, and Order Confirming Debtors' First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code with Modifications" in Case No. GG 08-09092. The Order was entered by Judge Gregg on December 31, 2009 and became a Final Order on January 31, 2010.

When a non-governmental entity, such as a private individual, is pursuing a cause of action under the provisions of the STAA against a company which is in bankruptcy proceedings, further STAA administrative proceedings are automatically stayed³. *Toland v. PST Vans, Inc.*, 93-STA-29 (Sec'y Sept. 7, 1994) The automatic stay continues until the bankruptcy case is closed, dismissed, or discharge is granted or denied, or until the bankruptcy court grants some sort of relief from the stay. *Haubold v. KTL Trucking Co.*, ARB No. 08-025, ALJ No. 2000-STA-35 (ARB Feb. 27, 2009) Once the respondent company has passed through bankruptcy, the company is considered to be discharged and dismissed from the STAA cause of action unless the Complainant provides evidence showing otherwise. see *Powers v. Paper, Allied-Industrial Chemical & Energy Workers Int'l Union (PACE)*, ARB No. 04-111, ALJ No. 2004-AIR-19 (ARB Aug. 31, 2007)

Review of the Order issued by Judge Gregg establishes that the Respondent has passed through bankruptcy as of January 31, 2010. Accordingly, Complainant's appeal and request for hearing must be dismissed.

ORDER

In view of the foregoing, **IT IS HEREBY ORDERED that the complaint is DISMISSED** and the above referenced matter is now considered closed.

A

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia

³ The actions by OSHA on an initial claim are the actions of a governmental entity and not subject to the automatic stay provisions of the U.S. Bankruptcy Code provisions of 11 U.S.C. § 362(a).

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, NW, 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.