



**Issue Date: 27 September 2011**

Case No.: 2011-STA-00014

In the Matter of:  
STEVE ASHBA,  
Complainant

v.

QUALITY ENTERPRISE,  
Respondent

**ORDER APPROVING WITHDRAWAL OF OBJECTIONS  
AND DISMISSAL OF COMPLAINT**

This proceeding arises under the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 31105 (herein the STAA) and the regulations promulgated thereunder at 29 C.F.R. Part 1978. On August 23, 2011, Complainant submitted a request by email that his complaint be dismissed against Respondent. On August 24, 2011, I issued an Order to the parties to Show Cause within ten days why Complainant's request for dismissal should not be treated as a request for withdrawal of his objections to the OSHA findings. No responses have been received within the time allowed.

The Rules For Implementing Section 405 of the Surface Transportation Assistance Act of 1982, 29 C.F.R. §1978.111, provide that, "at any time before the findings and order becomes final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge." The judge shall determine whether to affirm any portion of the findings or preliminary order or to approve the withdrawal.

Complainant has submitted such a withdrawal in the form of a request to dismiss his complaint, which is construed as a withdrawal of his objections to the Secretary's findings, which is hereby accepted. Accordingly, and consistent with the regulation, the Complaint is hereby **DISMISSED**, with prejudice, and the formal hearing, previously scheduled for August 25, 2011, is **CANCELLED**.

**SO ORDERED.**

**A**

JOSEPH E. KANE  
Administrative Law Judge

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business 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.

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. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(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. § 1978.110(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. §§ 1978.109(e) and 1978.110(a). 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. §§ 1978.110(a) and (b).