U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 13 September 2011

CASE NOS.: 2011-STA-46
2011-STA-49

IN THE MATTER OF

CARL B. BEDWELL, SR.
Complainant

vs.

SPIRIT-MILLER NE, LLC
TRAVELERS INSURANCE COMPANY
CAROLINA CASUALTY INSURANCE & TAX MASTERS
Respondents

DECISION AND ORDER DISMISSING CONSOLIDATED COMPLAINTS AS UNTIMELY

BACKGROUND

Case No. 2011-STA-46 arises under the Employee Protection Provisions of the Surface Transportation Assistance Act (the STAA), 49 U.S.C. § 31105, and its implementing regulations, 29 C.F.R. Part 1978, brought by Carl B. Bedwell, Sr. (Complainant) against Spirit-Miller NE, LLC and Travelers Insurance Company (Respondents). Complainant alleges Respondents discriminated against him in August of 2009. The complaint was filed on June 27, 2011.

On June 30, 2011, the Secretary of Labor, acting through her agent, the Regional Administrator for the Occupational Safety and Health Administration ("OSHA"), found no reasonable cause to believe that Respondents violated the STAA. Specifically, OSHA found 1) While Spirit was a covered employer under the Act, Travelers was not; 2) That the complaint filed June 27, 2011 alleging a reprisal in August 2009 was untimely and 3) The subject matter of the complaint was unrelated to protected activity under the Act.

Complainant objected to those findings and requested a hearing before this office.

Case No. 2011-STA-49 arises under the Employee Protection Provisions of the Surface Transportation Assistance Act (the STAA), 49 U.S.C. § 31105, and its implementing regulations, 29 C.F.R. Part 1978, brought by Carl B. Bedwell, Sr. (Complainant) against Spirit-Miller NE, LLC and Carolina Casualty Insurance & Tax Masters (Respondents). Complainant alleges Respondents discriminated against him in violation of the STAA. The complaint was filed July 11, 2011.

On July 13, 2011, the Secretary of Labor, acting through her agent, the Regional Administrator for the Occupational Safety and Health Administration ("OSHA"), found no reasonable cause to believe that Respondents violated the STAA. Specifically, OSHA found 1) while Spirit was a covered employer under the Act, Carolina Casualty Insurance & Tax Masters were not; 2) that the complaint filed July 11, 2011, alleging a reprisal in January 2009 was untimely and 3) the subject matter of the complaint was unrelated to protected activity under the Act.

Complainant objected to all findings and requested a hearing before this office as well as consolidation of these two claims which involve the same employer, Spirit-Miller NE, LLC.

On my own motion, and in the interest of judicial economy, by sue sponte orders dated July 25, 2011, and August 8, 2011, Complainant was given an opportunity to show cause why his complaints should not be dismissed for not having been filed within 180 days of his alleged reprisals in 2009. To both orders Complainant has filed similar responses.

DISCUSSION AND FINDINGS

In his responses, Complainant does not deny not having filed these consolidated complaints within 180 days of any alleged adverse action. Rather, Complainant appears to seek a tolling based on the fact that neither his former employer, Spirit-Miller NE, LLC nor its insurance carriers are entitled to engage in proceedings under the Act because employer was an "unchartered surface carrier" over which the Department of Labor has no jurisdiction. Put another way, Complainant alleges Spirit-Miller NE, LLC"…is not a covered employer under the Act and [the carriers] provided insurance to an unchartered carrier…" during the period of February 22, 2002 to September 18, 2008 when DOT records reveal no history records.

Complainant's rather confusing replies do not deny the untimeliness of his complaints nor provided a justification in law or equity as to why his complaints should not be dismissed as untimely. Accordingly, the complaints of Carl B. Bedwell are **DISMISSED**.

So ORDERED this 13th day of September, 2011, at Covington, Louisiana.

A

C. RICHARD AVERY
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. 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).

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).