

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 02 November 2010

Case No.: 2011-STA-00002

In the Matter of

GARY GOODWIN

Complainant

v.

NORTHERN FRONTIER TRANSPORTATION CORP.

Respondent

ORDER OF DISMISSAL

This proceeding involves a complaint filed under the “whistleblower” employee protection provisions of Section 405 of the Surface Transportation Assistance Act of 1982, as amended, 49 U.S.C. § 31105 (formerly 49 U.S.C. § 2305), and its implementing regulations, 29 C.F.R. part 1978 (“the Act”).¹

In a letter dated July 28, 2010 the Regional Administrator for the Occupational Safety and Health Administration (“OSHA”) notified Complainant that OSHA determined there was no merit to his complaint that Respondent had violated the Act. Accordingly, Complainant was advised that his complaint was dismissed.

OSHA’s determination also advised Complainant that he had a right to appeal the determination and request a hearing before the Office of Administrative Law Judges (“OALJ”) within 30 days. In addition, Complainant was advised that a copy of his appeal and request for a hearing must be served on all parties associated with his complaint.

By correspondence faxed on October 1, 2010, Complainant indicated his desire to appeal OSHA’s determination of July 28, 2010 and requested a hearing on his complaint. Given the untimeliness of Claimant’s correspondence, on October 7, 2010 the undersigned issued an Order to Claimant to show cause why OSHA’s determination should not become the final order of the Secretary of Labor.

¹ Effective August 31, 2010, all Administrative Law Judge determinations are now characterized as “Final” rather than “Recommended.” See “Procedures for the Handling of Retaliation Complaints Under the Employee Protection Provision of the Surface Transportation Assistance Act of 1982,” (Interim Rule), 75 Fed. Reg. 53,544, at 53,550 (Aug. 31, 2010).

To date, and with time for such filing expired, Complainant has not responded to my order of October 7, 2010. Therefore, I find that Complainant's fax of October 1, 2010 appealing OSHA's determination is untimely. Accordingly, OSHA's determination of July 28, 2010 shall be deemed the final order of the Secretary of Labor in accordance with 29 C.F.R. § 1978.105(b)(2).

SO ORDERED.

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THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey

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).