



Issue Date: 28 February 2012

Case No.: **2011-STA-48**

In the Matter of:

MICHAEL STALF,
Complainant

v.

ALLGEIER & SON,
Respondent

**DECISION AND ORDER DISMISSING THE COMPLAINANT'S OBJECTIONS
TO THE FINDINGS BY OSHA ON BEHALF OF THE SECRETARY OF LABOR**

This proceeding arose from a claim for whistleblower protection under the Surface Transportation Assistance Act (STAA), as amended, and its implementing regulations.¹ On March 29, 2011, the Complainant, Michael Stalf, filed a claim with the Occupational Safety and Health Administration ("OSHA") alleging that the Respondent, Allgeier & Son, violated the STAA by firing him because he engaged in activity protected by the Act. On June 15, 2011, the Regional Administrator for OSHA issued findings on behalf of the Secretary of Labor dismissing the complaint. Mr. Stalf objected to OSHA's findings and requested a hearing before the Office of Administrative Law Judges ("OALJ").

On August 16, 2011, I issued a Notice of Assignment, Notice of Hearing, and Pre-Hearing Order setting the claim for hearing on November 28, 2011. I held a telephone conference with the parties on September 26, 2011. The conference was recorded by a court reporter, and the transcript is in the record. After the conference, the parties requested that a settlement judge be appointed to help them try to resolve the case. A settlement judge was appointed on October 7, 2011. The settlement judge proceeding concluded on November 7, 2011. No settlement was reached. On November 21, 2011, I continued the hearing to give the parties time to prepare the case.

On January 13, 2012, I held another telephone conference to discuss how the case should proceed. The conference was recorded by a court reporter, and the transcript has been filed in the record. Mr. Stalf represented himself. Gerry Norton, Allgeier's Safety and Operations Manager, represented the Respondent. When Mr. Stalf was fired, Allgeier opposed his application for unemployment benefits. The benefits were then denied. Mr. Stalf stated that since the settlement judge proceeding concluded, the

¹ 49 U.S.C. § 31105; 29 C.F.R. Part 1978 (2011).

decision denying his application for unemployment compensation had been overturned, and he had received retroactive unemployment benefits. He said he had told Mr. Norton that receiving unemployment benefits would resolve his claim. Mr. Norton represented that if Mr. Stalf agreed to accept his unemployment benefits in lieu of pursuing his STAA claim, then Allgeier would not appeal the award of unemployment compensation. Mr. Stalf agreed that he had received what he sought, and no longer wished to pursue his STAA claim.

The regulations provide that a party may withdraw its objections to the findings by filing a written withdrawal. The Administrative Law Judge must then determine whether to approve the withdrawal of the objections. If the judge approves a request to withdraw objections, and there are no other pending objections, the OSHA findings become the final order of the Secretary of Labor.² I explained to Mr. Stalf that if he withdrew his objections, then OSHA's finding would become the final decision on his claim. I advised Mr. Stalf that he should send a letter to me withdrawing his objections to OSHA's findings. He indicated that he would send the letter. More than 30 days have passed, but Mr. Stalf has not submitted the letter. Nor has he taken any action to pursue his STAA claim further.

Under the circumstances of this case, I find that by agreeing to withdraw his objections to OSHA's findings on the record during the telephone conference, Mr. Stalf was in substantial compliance with the regulation regarding withdrawal. Being duly advised, I find that his request to withdraw his objections to the OSHA findings should be GRANTED.

IT IS THEREFORE ORDERED that Mr. Stalf's objections to the findings by OSHA are WITHDRAWN. The findings issued by OSHA on June 15, 2011, shall be the final order of the Secretary of Labor on this claim.

A

Alice M. Craft
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

² 29 C.F.R. § 1978.111(c).

filed when the Board receives it.³ Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically.⁴

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.⁵

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.⁶ 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.⁷

³ See 29 C.F.R. § 1978.110(a).

⁴ See 29 C.F.R. § 1978.110(a).

⁵ See 29 C.F.R. § 1978.110(a).

⁶ See 29 C.F.R. §§ 1978.109(e) and 1978.110(a).

⁷ See 29 C.F.R. §§ 1978.110(a) and (b).