

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 18 October 2012

CASE NO.: 2012-STA-00013

IN THE MATTER OF

**DOUGLAS WALLIN,
Complainant**

v.

**JUNG TRUCK SERVICE, INC./
JUNG TRANSPORT LLC,
Respondent**

INITIAL DECISION AND ORDER, AND CANCELLING HEARING

This Case arises under the employee protection provision of the Surface Transportation Assistance Act (STAA), 49 U.S.C. § 31105, and implementing regulations, 29 C.F.R. Part 1978. On June 17, 2011, Complainant filed a complaint with the Secretary of Labor alleging that his employer, Jung Truck Service, Inc./Jung Transport LLC, violated the employee protection provisions of the STAA, which provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would violate those rules.

After investigating Claimant's complaint, the Occupational Safety and Health Administration (OSHA) found that Respondent did not violate the STAA. Complainant objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge. A hearing was scheduled on April 17, 2012 in St. Louis, MO. The parties moved to postpone the hearing in order to conduct discovery. The hearing was rescheduled for July 16, 2012 in St. Louis, MO. On July 2, 2012, Respondent filed a Motion to Postpone Hearing. The hearing was rescheduled for November 13, 2012 in St. Louis, MO.

On October 10, 2012, Complainant a Notice of Intent to File District Court Complaint for De Novo Review. The STAA permits a complainant to file an action in the appropriate federal district court if the Secretary of Labor has not issued a final decision within 210 days of the date of the complaint and if there is no showing that the complainant has acted in bad faith to delay the proceedings. 49 U.S.C. § 31105(c); *see Oliveri v. North Star Food Service, Inc.*, ARB No. 09-097, Case No. 2009-STA-00026 (Aug. 14, 2009). Complainant filed his notice over 210 days after he filed his complaint with OSHA.

Since Complainant has chosen to proceed in district court, the Department of Labor no longer has jurisdiction over this case.

Accordingly, Complainants case is **DISMISSED** on the ground that Complainant has filed suit in district court.

IT IS HEREBY ORDERED that the hearing in the above entitled matter is **CANCELLED** for November 13, 2012, 9:00 A.M. in St. Louis, MO.

SO ORDERED this 18th day of October, 2012, at Covington, Louisiana.

**CLEMENT J. KENNINGTON
ADMINISTRATIVE LAW JUDGE**