



In the Matter of:

CEDRIC CHEELEY,

ARB CASE NO. 2019-0019

COMPLAINANT,

ALJ CASE NO. 2017-STA-00032

v.

DATE: December 19, 2019

IESI PROGRESSIVE WASTE
SOLUTIONS,

RESPONDENT.

Appearances:

For the Complainant:

Cedric Cheeley; *pro se*; Dallas, Texas

For the Respondent:

Timothy R. Newton, Esq.; *Constangy, Brooks, Smith & Prophete, LLP*;
Atlanta, Georgia

BEFORE: James A. Haynes, Thomas H. Burrell, and Heather C. Leslie,
Administrative Appeals Judges

FINAL DECISION AND ORDER

PER CURIAM. This case arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA) as amended. 49 U.S.C.

§ 31105(a) (2007); *see also* 29 C.F.R. Part 1978 (2018) (implementing regulations). To prevail on a STAA claim, an employee must prove by a preponderance of the evidence that he engaged in protected activity that was a contributing factor in unfavorable personnel action taken against him. 49 U.S.C. § 42121(b)(2)(B)(iii).

Respondent Progressive Waste hired Cheeley as a Rear Load Driver of a garbage truck in April 2016. As a driver, he was also required to help empty residential garbage cans into the rear loader. Cheeley did not complete the probationary training period and his employment was terminated in June 2016.

Cheeley filed a timely complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) on October 12, 2016, alleging that Progressive Waste fired him in retaliation for making safety complaints regarding fatigue, overweight trucks, and trucks being driven at unsafe speeds while other employees were holding on to the back. The STAA prohibits employers from discriminating against employees when they report violations of commercial motor vehicle safety rules or when they refuse to operate a vehicle when such operation would violate those rules.¹ After an investigation, OSHA determined on January 12, 2017, that Progressive Waste was not a covered employer under the STAA. Cheeley objected and timely requested a hearing with the Office of Administrative Law Judges (OALJ), which was held on May 31, 2018. A Department of Labor Administrative Law Judge (ALJ) dismissed Cheeley's complaint after conducting a hearing and receiving evidence because he found that Cheeley had failed to prove that any protected activity was a contributing factor in his termination.

The ALJ concluded that Cheeley had engaged in protected activity when he reported his concerns that the trucks would speed while he was holding on to the back, the trucks could be in excess of the maximum allowable weight, and that he was unable to throw trash and drive safely through a full shift. However, he found that Cheeley's concern regarding fatigue making the job inherently unsafe was unreasonable as he had information available to him at the time that the other employees were able to complete the routes in a much quicker time, and concluded that this did not establish protected activity. The ALJ then reviewed the evidence regarding the relationship between Complainant's protected activity and his termination, including the testimony of Respondent's operations manager. The ALJ

¹ *See* 49 U.S.C. § 31105(a).

noted that Respondent's operations manager at the location where Cheeley worked had concerns about Cheeley's performance before he complained about the weight or speed of the trucks. Decision and Order at 12. Thus, the ALJ found that the evidence established that Progressive Waste terminated Cheeley's employment due to his inability to consistently complete his work in the time allotted, and the protected activity played no role in his termination.

Cheeley petitioned the Administrative Review Board for review of the ALJ's decision.² Upon review of the ALJ's Decision and Order, the pleadings, and the administrative record, we conclude that the ALJ's factual findings are supported by substantial evidence and his conclusions of law are correct and well-reasoned. Accordingly, we hereby **ADOPT** the ALJ's decision, attach it to this document, and **DENY** Cheeley's complaint.

SO ORDERED.

² In its response brief, Progressive Waste raised issues regarding the ALJ's finding that Cheeley had engaged in protected activity. We will not address these contentions as they were not properly raised in a cross-appeal.