



In the Matter of:

BRIAN HEYWARD,

ARB CASE NO. 2021-0023

COMPLAINANT,

ALJ CASE NO. 2020-STA-00117

v.

DATE: September 7, 2021

BENORE LOGISTIC SYSTEM, INC.,

RESPONDENT.

Appearances:

For the Complainant:

Brian Heyward; *pro se*; Piedmont, South Carolina

For the Respondent:

A. Jack Finklea, Esq.; *Scopelitis, Garvin, Light, Hanson & Feary, P.C.*; Indianapolis, Indiana

Before: James D. McGinley, *Chief Administrative Appeals Judge*, Randel K. Johnson and Stephen M. Godek, *Administrative Appeals Judges*

ORDER DENYING RECONSIDERATION

PER CURIUM. This case arises under the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 31105(a) (2007) (STAA), as amended, and its implementing regulations at 29 C.F.R. Part 1978 (2020). Brian Heyward (Complainant) filed a complaint alleging that Respondent retaliated against him in violation of STAA's whistleblower protection provisions. The Administrative Law Judge (ALJ) issued a Decision and Order dismissing the complaint. Complainant appealed to the Administrative Review Board (Board). On July 29, 2021, the Board dismissed the complaint.

On August 12, 2021, Complainant filed a petition seeking reconsideration of the Board's decision.

The Board is authorized to reconsider a decision upon the filing of a motion for reconsideration within a reasonable time of the date on which the Board issued the decision.¹ In considering whether to reconsider a decision, the Board has applied a four-part test to determine whether the movant has demonstrated:

(i) material differences in fact or law from that presented to the Board of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the Board's decision, (iii) a change in the law after the Board's decision, and (iv) failure to consider material facts presented to the Board before its decision.²

Complainant asserts that we should reconsider our decision for several reasons. First, Complainant contends that Respondent violated the Federal Motor Carrier Safety Administration regulatory drug and alcohol collection procedures by not securing the collection area, not preventing distractions for the collector, and allowing more than one employee at a time in the collection area. Next, Complainant contends that he engaged in protected activity by refusing to participate in the drug test, and that he was coerced when he was informed that he could only participate in the drug test at Respondent's test site. He asserts that Respondent's coercion demonstrates that he was fired, at least in part, for engaging in protected activity.

Complainant's motion does not fall within any of the first three grounds for reconsideration. Rather, he appears to rely solely on a claimed failure to consider material facts. However, because Complainant's motion repeats arguments that he had already raised in his original appeal, we will not address them again on reconsideration.³

Accordingly, we **DENY** Complainant's Petition for Reconsideration.

SO ORDERED.

¹ *Abbs v. Con-Way Freight, Inc.*, ARB No. 2012-0016, ALJ No. 2007-STA-00037 (ARB June 11, 2013).

² *Clark v. Hamilton Hauling, LLC*, ARB No. 2013-0023, ALJ No. 2011-STA-00007 (ARB July 24, 2014) (quotations omitted).

³ *Jackson v. CPC Logistics*, ARB No. 2007-0006; ALJ No. 2006-STA-00004 (ARB Jan. 29, 2009) (denying motion for reconsideration where a party repeated his prior arguments); *Elbert v. True Value Co. and John Doe and Mary Roe*, ARB No. 2007-00031, ALJ No. 2005-STA-00036 (ARB Nov. 24, 2010) (denying motion for reconsideration where a party "merely repeats arguments he raised before.").