

**U.S. Department of Labor**

Administrative Review Board  
200 Constitution Ave. NW  
Washington, DC 20210-0001



**IN THE MATTER OF:**

**CODY SHARPE,**

**ARB CASE NO. 2024-0038**

**COMPLAINANT,**

**ALJ CASE NO. 2023-STA-00027**

**ALJ DREW A. SWANK**

**v.**

**DATE: April 29, 2026**

**GEIGER EXCAVATING, INC.,  
CHRISTOPHER STABLER, and  
BRUCE MERTZ,**

**RESPONDENTS.**

**Appearances:**

***For the Complainant:***

**Peter L. LaVoie, Esq. and Paul O. Taylor, Esq.; *Truckers Justice Center*; Edina, Minnesota**

***For the Respondents:***

**Megan M. Torres, Esq. and Craig R. Patterson, Esq.; *Beckman Lawson, LLP*; Fort Wayne, Indiana**

**Before BURRELL and KIKO, Administrative Appeals Judges**

## **DECISION AND ORDER**

This case arises under the Surface Transportation Assistance Act of 1982 (STAA), as amended, and its implementing regulations.<sup>1</sup> Complainant Cody Sharpe filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Respondents Geiger Excavating, Inc., Christopher Stabler, and Bruce Mertz retaliated against him for engaging in STAA protected activity. A United States Department of Labor Administrative Law Judge (ALJ) issued an Order Granting Respondents' Motion for Summary

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<sup>1</sup> 49 U.S.C. § 31105(a); 29 C.F.R. Part 1978 (2025).

Judgment, Dismissing Complainant's Claims with Prejudice, Denying Respondents' Motion to Convert the Hearing, and Cancelling Hearing (Order Granting Summary Decision). Complainant petitioned the Administrative Review Board (ARB or Board) for review. For the following reasons, we summarily affirm the ALJ's Order Granting Summary Decision.

## BACKGROUND

In May 2021, Geiger Excavating, Inc. (Geiger) hired Complainant as a driver responsible for transporting heavy construction and excavation equipment to job sites and performing snow removal during winter months.<sup>2</sup> Beginning in January 2022, Complainant accepted a part-time position with Tri County Ambulance, working overnight shifts on Fridays and Saturdays.<sup>3</sup> After accepting this part-time position, Complainant informed Stabler, his dispatcher, that he would be unavailable to work weekends for Geiger.<sup>4</sup>

Between February 2 and 4, 2022, Complainant was assigned to perform snow removal.<sup>5</sup> During this assignment, Complainant sent a text message to Mertz, his supervisor, stating, "this is the last snow fall I work."<sup>6</sup> On February 4, 2022, at approximately 2:44 p.m., Stabler contacted Complainant and requested that he complete a delivery assignment to Terre Haute, Indiana, over the weekend, on either February 5 or 6.<sup>7</sup> The assignment involved an approximately 200-mile, 10-hour round trip.<sup>8</sup> Complainant declined the assignment via text message, stating that he was unavailable.<sup>9</sup> Complainant did not provide an explanation for the refusal.<sup>10</sup> At the time of the refusal, Complainant had accumulated approximately 54.5 on-duty hours for Geiger during the relevant week of Monday, January 31,

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<sup>2</sup> Order Granting Summary Decision at 2.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.*

<sup>5</sup> Complainant's Brief on Review (Comp. Br.) at 3.

<sup>6</sup> The ALJ identified a discrepancy between the parties whether Complainant sent the text to Stabler or to Mertz. Order Granting Summary Decision at 2 n.8. The ALJ noted that the precise recipient was not material to the claim. In the light most favorable to Complainant, we follow Complainant's declaration and Complainant's Memorandum of Points and Authorities in Opposition to Respondents' Motion for Summary Decision. *Id.*

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

2022, through Friday, February 4, 2022.<sup>11</sup> Geiger operated seven days per week, and its drivers were subject to the 70-hour rule.<sup>12</sup>

Following Complainant's refusal, Mertz and Stabler discussed the matter, as well as his previous refusal to perform future snow removal, and decided on February 4 to terminate Complainant's employment.<sup>13</sup> Complainant's next scheduled workday was February 7, 2022.<sup>14</sup> On that date, Stabler informed Complainant that his employment was terminated.<sup>15</sup> The Employee Termination Form listed the reason for termination as: "[Mertz] needed Cody to move equipment to Terre Haute on 2/5/22 and Cody said he doesn't for Geiger on weekends. Cody also text[ed Stabler] on 2/3/22 and stated he will no longer help with snow removal."<sup>16</sup> During the February 7 meeting, Complainant told Stabler that he refused the Terre Haute assignment because he believed he did not have sufficient available hours to complete the trip.<sup>17</sup>

On February 9, 2022, Complainant filed a complaint with OSHA alleging that Respondents retaliated against him in violation of the STAA.<sup>18</sup> On January 31, 2023, OSHA issued Secretary's Findings concluding that there was no reasonable cause to believe a violation occurred and dismissed the complaint.<sup>19</sup> Complainant filed objections to the Secretary's Findings and requested a hearing before the Office of Administrative Law Judges (OALJ).<sup>20</sup>

On February 26, 2024, Respondents filed a Motion for Summary Decision and a Memorandum in Support of Summary Decision.<sup>21</sup> On March 12, 2024, Complainant filed a Memorandum of Points and Authorities in Opposition to

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 10 n.20.

<sup>13</sup> *See id.* at 10, 10 n.22; Respondents' Designation of Evidence and Table of Contents in Support of Summary Decision, Exhibits (Exs.) A-B; *see also* Order Granting Summary Decision at 2 (Stabler decided to terminate Complainant's employment on February 3 after receiving notice of the snow plow text).

<sup>14</sup> *See* Order Granting Summary Decision at 3; Comp. Br. at 3-4.

<sup>15</sup> Order Granting Summary Decision at 3.

<sup>16</sup> Complainant's Memorandum of Points and Authorities in Opposition to Respondents' Motion for Summary Decision, Ex. C at 1.

<sup>17</sup> Order Granting Summary Decision at 3.

<sup>18</sup> *Id.* at 1.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

Respondents' Motion for a Summary Decision.<sup>22</sup> On April 5, 2024, the ALJ granted Respondents' Motion for Summary Decision concluding that, although Complainant established that he suffered an adverse employment action, he failed to establish a genuine issue of material fact that he engaged in protected activity under the STAA.<sup>23</sup> The ALJ further determined, in the alternative, that even if Complainant had engaged in protected activity, he failed to establish a genuine issue of material fact that such activity was a contributing factor in his termination.<sup>24</sup>

Complainant filed a timely petition for review with the Board. Both parties filed briefs.

### JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the ARB to review appeals from ALJ decisions and to issue agency decisions in cases arising under the STAA.<sup>25</sup> The Board reviews an ALJ's grant of summary decision de novo, the same standard the ALJ applies.<sup>26</sup>

### DISCUSSION

The STAA's whistleblower protection provision provides that a person may not discharge, discipline, or discriminate against an employee regarding his pay, terms, or privileges of employment because the employee has engaged in statutorily protected activity.<sup>27</sup> To prevail on a STAA claim, a complainant must prove by a preponderance of the evidence that: (1) he engaged in protected activity; (2) the employer took adverse employment action against him; and (3) the protected

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<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.* at 11.

<sup>24</sup> *Id.*

<sup>25</sup> Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)), 85 Fed. Reg. 13186 (Mar. 6, 2020).

<sup>26</sup> *Robles v. Mr. Bults, Inc.*, ARB No. 2025-0058, ALJ Nos. 2025-STA-00050, -00051, -00052, slip op. at 3 (ARB Feb. 20, 2026) (citing *Kirschmann v. Hampton Rds. Transit*, ARB No. 2023-0002, ALJ No. 2021-NTS-00006, slip op. at 6 (ARB Feb. 14, 2024)).

<sup>27</sup> 49 U.S.C. § 31105(a)(1); *see also* 29 C.F.R. § 1978.102(a). STAA complaints are governed by the legal burdens of proof set forth in the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21). 49 U.S.C. § 31105(b)(1); 49 U.S.C. § 42121(b).

activity was a contributing factor in the adverse employment action.<sup>28</sup> If the employee meets his burden of proof, the employer may avoid liability by proving by clear and convincing evidence that it would have taken the same unfavorable action in the absence of the protected activity.<sup>29</sup>

The ALJ issued an Order Granting Summary Decision concluding that Complainant failed to establish a genuine issue of material fact that he engaged in protected activity under the STAA.<sup>30</sup> As to Complainant's February 4 refusal to drive to Terre Haute, the ALJ found that Complainant's text message reply of "I am not [available]" did not constitute a protected complaint or refusal because it offered no explanation that the drive would constitute an actual or a perceived safety violation or that the refusal was based on a reasonable apprehension of serious injury.<sup>31</sup> Instead, the ALJ concluded that unexplained refusal was analogous to a "silent departure" as it failed to put Respondents on notice of any protected activity.<sup>32</sup>

Additionally, assuming *arguendo*, that Complainant had engaged in protected activity, the ALJ concluded in the alternative that Complainant failed to establish a genuine issue of material fact that any protected activity was a contributing factor in the decision to terminate his employment. Specifically, the ALJ found that Respondents terminated Complainant's employment for non-retaliatory reasons<sup>33</sup> and Stabler and Mertz were not aware of any actual or perceived violations when they discussed and decided to terminate Complainant's employment on February 4 for refusing snow removal assignments and the Terre Haute assignment.<sup>34</sup>

Complainant argues on appeal that the ALJ erred in his protected activity analysis.<sup>35</sup> Specifically, Complainant contends that the ALJ failed to consider the full scope, timing, and context of his alleged protected activity as well as whether

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<sup>28</sup> 49 U.S.C. § 42121(b)(2)(B)(iii); 29 C.F.R. § 1978.109(a); *Halliday v. Transp. Express, Inc.*, ARB No. 2023-0024, ALJ No. 2020-STA-00067, slip op. at 12 (ARB Oct. 7, 2024) (citations omitted).

<sup>29</sup> 49 U.S.C. § 42121(b)(2)(B)(iv); 29 C.F.R. § 1978.109(b); *Halliday*, ARB No. 2023-0024, slip op. at 12 (citations omitted).

<sup>30</sup> Order Granting Summary Decision at 9.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 10-11.

<sup>34</sup> *Id.* at 10.

<sup>35</sup> Comp. Br. at 9.

additional conduct not addressed by the ALJ qualified as protected activity.<sup>36</sup> Complainant further argues that the ALJ erred in his contributing factor analysis by failing to consider all instances of protected activity, improperly assessing Respondents' knowledge of such activity, and overlooking circumstances relevant to causation, including Complainant's ordinary work schedule and part-time employment commitments.<sup>37</sup>

Upon consideration of the parties' briefs on appeal and review of the record as a whole, we conclude that the ALJ appropriately granted summary decision.

## 1. Protected Activity

We agree with the ALJ that Complainant's refusal of the Terre Haute assignment did not constitute protected activity because at the time of the refusal, Complainant provided no explanation, and the surrounding circumstances did not indicate to Respondents that the refusal was based on an actual or perceived safety or regulatory violation.<sup>38</sup> Rather, Complainant's February 4 text message only communicated an unwillingness to accept the assignment. Following both refusals, Respondents decided on February 4 to terminate Complainant's employment before his next scheduled workday and informed him of that decision on February 7.<sup>39</sup> We

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<sup>36</sup> *Id.* at 9-12.

<sup>37</sup> *Id.* at 12-16. Complainant also avers that the ALJ erred by reaching alternate findings on Respondents' affirmative defense. *Id.* at 16-18. This argument is misguided as the ALJ did not address or analyze whether Respondents would have taken the same action absent protected activity. Order Granting Summary Decision at 11.

<sup>38</sup> A refusal must convey enough context to put the respondent on notice that it is grounded in a perceived violation. *See cf. Calhoun v. U.S. Dep't of Lab.*, 576 F.3d 201, 213 (4th Cir. 2009) (internal quotations and citations omitted) (“[H]owever broadly we construe the statute, [c]learly there is a point at which an employee's concerns and comments are too generalized and informal to constitute” protected activity under the STAA.); *DeTie v. Transwood, Inc.*, ARB No. 2024-0041, ALJ No. 2022-STA-00038, slip op. at 9 n.57 (ARB Mar. 25, 2026) (noting that while *Calhoun's* language concerned the STAA's complaint clause, the same logic follows for the refusal clause).

<sup>39</sup> Complainant argues on appeal that prior to being told his employment was terminated, he engaged in protected activity on February 7, 2022, when he informed Respondent that he would not have had enough hours to take the trip Respondent assigned to him. We disagree that there is a genuine issue of material fact that he engaged in protected activity in making this statement. While complaining of a lack of hours with respect to an assignment may constitute protected activity under STAA, it is undisputed that Complainant had enough hours as of the assignment on February 4. Order Granting Summary Decision at 10. Complainant reasons after the fact that he would not have had enough hours to take the Terre Haute assignment, but this was only *after* he completed the work for the other employer. Comp. Br. at 11-12.

agree. Accordingly, we conclude that the ALJ did not commit reversible error in granting summary decision for Respondents. Regarding Complainant's refusal to perform snow removal, he argues on appeal that it should constitute protected activity.<sup>40</sup> However, this appears to be a new protected activity claim raised for the first time on appeal. Generally, the Board does not consider arguments raised for the first time on appeal and we will not consider it here.<sup>41</sup>

## 2. Causation

We also agree with the ALJ that even assuming Complainant engaged in protected activity, he failed to raise a genuine issue of material fact that such activity was a contributing factor in his termination. As recognized in the Order Granting Summary Decision, Respondent terminated Complainant's employment for legitimate, non-discriminatory reasons—specifically, his refusal to perform snow removal assignments and the Terre Haute assignment. Finally, there is no genuine issue of material fact that Respondents decided to terminate Complainant's employment before the February 7 communication<sup>42</sup>—therefore causation cannot be proven as a matter of law.<sup>43</sup> It is a central to the concept of causation, that for an act to cause an outcome, the act must occur *first*.

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<sup>40</sup> Comp. Br. at 10.

<sup>41</sup> *Kossen v. Asia Pac. Airlines*, ARB No. 2023-0047, ALJ No. 2023-AIR-00001, slip op. at 7 n.32 (ARB May 30, 2025) (citing *Xia v. Lina T. Ramey & Assocs., Inc.*, ARB No. 2023-0046, ALJ No. 2022-LCA-00013, slip op. at 21-22 n.117 (ARB Oct. 7, 2024)).

<sup>42</sup> *See supra* note 17 and accompanying text and note 41.

<sup>43</sup> *See DeTie v. Transwood, Inc.*, ARB No. 2024-0041, ALJ No. 2022-STA-00038, slip op. at 9 (ARB Mar. 25, 2026) (“For one action to be ‘because’ of the other, a communication of the refusal is necessary.”) (citations omitted).

**CONCLUSION**

For the reasons stated above, we summarily **AFFIRM** the ALJ's Order Granting Summary Decision. Accordingly, Complainant's complaint is **DENIED**.

**SO ORDERED.**

**THOMAS H. BURRELL**  
**Administrative Appeals Judge**

**PHILIP G. KIKO**  
**Administrative Appeals Judge**