



In the Matter of:

ALVIN GARZA,

ARB CASE NO. 2018-0036

COMPLAINANT,

ALJ CASE NO. 2016-WPC-00002

v.

DATE: June 29, 2020

SAULSBURY INDUSTRIES,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Alvin Garza; *pro se*; Houston, Texas

For the Respondent:

Jon Mark Hogg, Esq.; *Jackson Walker L.L.P.*; San Angelo, Texas

**Before: Thomas H. Burrell, *Acting Chief Administrative Appeals Judge*;
Heather C. Leslie and James D. McGinley, *Administrative Appeals Judges***

DECISION AND ORDER

PER CURIAM. Alvin Garza filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) on June 6, 2015. Garza alleged that his employer, Saulsbury Industries, violated the employee protection provisions of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §1367 (1972), and the Solid Waste Disposal Act, 42 U.S.C. §6971 (1980), and their implementing regulations at 29 C.F.R. Part 24 (2019), when it terminated his employment in retaliation for raising safety concerns. The FWPCA and SWDA prohibit employers from discriminating against employees when they engage in activities protected by the respective statutes. After holding a hearing, a Department of Labor (DOL) Administrative Law Judge (ALJ) issued a Decision and

Order (D. & O.) denying the complaint because he found that Complainant's protected activity was not a motivating factor in Respondent's decision to terminate Complainant's employment and, alternatively, that Respondent proved by a preponderance of the evidence that it would have taken the same action against Complainant absent any protected activity. We summarily affirm.

BACKGROUND

Complainant worked for Respondent as a Manager of Field Safety Services from November 17, 2014, to May 15, 2015. D. & O. at 2.

From December 2014 to January 2015, due to the economic downturn in the oil and gas industry, Respondent was looking for ways to reduce its budget. *Id.* at 18, 37-38. Eddie Gonzales, Respondent's director of the Health, Safety and Environmental (HSE) Department (and Complainant's direct supervisor) and John Higgins, Respondent's Chief Human Resources Officer, were both informed by Respondent that Respondent would implement corporate budget reductions and initiate a reduction in force (RIF). *Id.* at 2, 14, 38. Indeed, on March 24, 2015, Respondent's Chief Financial Officer sent an email to Higgins informing him that a budget reduction of approximately \$600,000.00 was required for the HSE department which included Complainant. D. & O. at 8 (citing RX 2 at 1).

Complainant engaged in protected activity under the FWPCA and SWDA when he "relayed his concerns about the improper disposal of water from the plasma cutting table and the lack of a SWPPP [Storm Water Pollution Prevention Plan] and SPCCP [Spill Prevention Control and Countermeasures Plan] at Respondent's Henderson site to his direct supervisor, Mr. Gonzales" on April 1, 2015. *Id.* at 11, 35, 37.

Because of the budget reduction measures, beginning in April 2015, Respondent began significantly decreasing its number of full-time employees. *Id.* at 38. After learning the full extent of budget reductions required of him, Higgins selected Complainant to be laid off in the RIF because of his lack of tenure and lack of construction experience. *Id.* at 18, 38. Higgins had no knowledge of Complainant's protected activity when he made the decision to choose Complainant for the RIF. *Id.* at 37. Gonzales, Complainant's supervisor, informed Complainant that he would be laid off on May 8, 2015. *Id.* at 18. Complainant's last day with Respondent was May 15, 2015. *Id.* at 36.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Administrative Review Board authority to issue agency decisions under the FWPCA and SWDA. 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. 13,186 (Mar. 6, 2020); see 29 C.F.R. § 1982.110(a). The Board reviews the ALJ's factual determinations under the substantial evidence standard. 29 C.F.R. §24.110(b). Thus, we affirm the ALJ's findings if they are supported by substantial evidence in the record. The Board reviews an ALJ's conclusions of law de novo. *Kanj v. Veijas Band of Kumeyaay Indians*, ARB No. 2012-0002, ALJ No. 2006-WPC-00001, slip op. at 5 (ARB Aug. 29, 2012) (citations omitted).

DISCUSSION

In summarily affirming the ALJ's Decision and Order, we limit our comments to the most critical points. Substantial evidence in the record supports the ALJ finding that Complainant failed to prove motivating factor causation in this matter. Specifically, witness testimony (which the ALJ found credible) and other contemporaneous documentary evidence support the ALJ's finding that Respondent terminated Complainant's employment as part of a RIF due to budgetary concerns.¹ Further, substantial evidence also supports the ALJ's finding that Complainant was chosen for layoff by Higgins, who had no knowledge of Complainant's protected activity, as part of the RIF because he was the least senior manager and had the least construction experience. Thus, the Complainant failed to prove that his protected activity was a motivating factor in the termination decision.

Finally, substantial evidence in the record supports the ALJ's alternate finding that Respondent proved by a preponderance of the evidence that it would have terminated Complainant's employment absent his protected activity. Undisputed evidence of record establishes that Respondent was considering implementing a corporate RIF prior to Complainant's report of HSE concerns at the Henderson site.

¹ The ARB generally defers to an ALJ's credibility determinations unless they are "inherently incredible or patently unreasonable." *Kanj*, ARB No. 2012-0002, slip op. at 6 (quotations omitted).

CONCLUSION

Accordingly, we **AFFIRM** the ALJ's decision and order dismissing the complaint and **DENY** Garza's complaint.

SO ORDERED.