



In the Matter of:

AZIZ AITYAHIA,

ARB CASE NO. 2018-0028

COMPLAINANT,

ALJ CASE NO. 2017-AIR-00029

v.

DATE: September 12, 2019

AVIATION ACADEMY OF AMERICA,

RESPONDENT.

Appearances:

For the Complainant:

R. Chris Pittard, Esq.; *Pittard Law Firm*; San Antonio, Texas

For the Respondent:

Michael V. Galo, Jr., Esq.; *Galo Law Firm, P.C.*; San Antonio, Texas

Before: William T. Barto, *Chief Administrative Appeals Judge*; James A. Haynes and Thomas H. Burrell, *Administrative Appeals Judges*

FINAL DECISION AND ORDER

PER CURIAM. The Complainant, Aziz Aityahia, filed a retaliation complaint under the employee protection provision of the Wendell H. Ford Aviation

Investment and Reform Act for the 21st Century (AIR 21)¹ with the Department of Labor's Occupational Safety and Health Administration (OSHA). Complainant alleged that his employment with Aviation Academy of America (AAA) was terminated in retaliation against him for making safety-related complaints. OSHA dismissed the complaint because it lacked jurisdiction, but the case was referred to the Office of Administrative Law Judges (OALJ) at Complainant's request. The ALJ granted Respondent's Motion to Dismiss, holding that the complaint is not cognizable under AIR 21 and that the OALJ lacked jurisdiction to consider complaints under Section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. § 660(c) (1970) (OSH Act). Complainant filed a petition requesting that the Administrative Review Board (ARB or the Board) review the ALJ's order. We granted that petition and now affirm.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Administrative Review Board (ARB) the authority to issue final agency decisions in review or on appeal of matters arising under AIR 21 and its implementing regulations at 29 C.F.R. Part 1979.² The ARB will affirm the ALJ's factual findings if supported by substantial evidence but reviews all conclusions of law de novo. Summary decision is permitted when "there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law." 29 C.F.R. § 18.72(a) (2018). On appeal from summary decision, we review the record on the whole in the light most favorable to the non-moving party. *Micallef v. Harrah's Ricon Casino & Resort*, ARB No. 2016-0095, ALJ No. 2015-SOX-00025, slip op. at 3 (ARB July 5, 2018).

CONCLUSION

The ALJ's determination that there is no evidence that AAA is a covered employer under the employee protection provisions of AIR 21 is correct. For the reasons stated by the ALJ, there is no genuine issue of material fact that

¹ 49 U.S.C. § 42121 (2000). AIR 21's implementing regulations are found at 29 C.F.R. Part 1979 (2018).

² Secretary's Order No. 01-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13,072 (April 3, 2019); 29 C.F.R. § 1979.110(a).

Respondent AAA is itself a direct or an indirect air carrier or a contractor or subcontractor of an air carrier. Moreover, the ALJ correctly concluded that Section 11(c)(2) of the OSH Act does not provide an administrative appellate remedy for complaints under that Act that are dismissed by the Secretary of Labor. Thus, we adopt the ALJ's well-reasoned order Ruling on Respondent's Motion to Dismiss as the final agency decision in this matter and attach a copy hereto.³

SO ORDERED.

³ While we agree with the ALJ's reasoning in finding that AAA is not a covered employer under AIR 21, we note that the ALJ mischaracterized the relationship between Vision Technologies Aerospace Incorporated (VT Aerospace), AAA's parent company, and Singapore Technologies Aerospace, Ltd. (ST Aerospace). *See* Ruling on Respondent's Motion to Dismiss at 2. Based upon the evidence in this matter, it appears that ST Aerospace is a direct subsidiary of Singapore Technologies Engineering, Ltd, the primary parent company, not VT Aerospace. This is evidence that the relationship between AAA and any company that actually has a contract with an air carrier is even more attenuated than found by the ALJ.