



**In the Matter of:**

**JAMES CHI C. LEE,**

**ARB CASE NO. 02-102**

**COMPLAINANT,**

**ALJ CASE NO. 2002-STA-25**

**v.**

**DATE: August 28, 2003**

**SCHNEIDER NATIONAL, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**James Chi C. Lee, pro se, Westmont, Illinois**

*For the Respondent:*

**Miles Mittelstadt, Esq., Schneider National, Inc., Green Bay, Wisconsin**

### **FINAL DECISION AND ORDER**

This case comes to us to review a Department of Labor Administrative Law Judge's (ALJ) Recommended Decision and Order (R. D. & O.) granting Schneider National's Motion for Summary Decision. Schneider National discharged James Chi C. Lee, one of its employee drivers. Lee filed a whistleblower complaint with the Department of Labor alleging that Schneider fired him in violation of the employee protection provisions of the Surface Transportation Assistance Act (STAA).<sup>1</sup> We have

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<sup>1</sup> 49 U.S.C.A. § 31105 (West 1997).

jurisdiction to decide this matter.<sup>2</sup> The sole issue before us is whether Lee's whistleblower complaint should be dismissed on summary decision because it was untimely filed.

The procedural history below is easily summarized. Lee was discharged on or about February 26, 2001, but did not file his complaint until on or about November 21, 2001. STAA complainants generally must file a complaint within 180 days after the violation occurs.<sup>3</sup> Certain circumstances, however, will justify tolling the 180-day period.<sup>4</sup> On March 27, 2002, Schneider moved for summary decision on the grounds that Lee's complaint was not timely filed. On May 28, 2002, Lee responded in opposition to Schneider's motion.

In short, Lee admitted filing the complaint with the Department of Labor more than 180 days after being fired but, in opposing Schneider's motion, he alleges four facts which, he argues, justify tolling the 180-day period: (1) a Schneider official concealed or misled him as to the true reason for his discharge; (2) due to an accident on February 22, 2001, he was mentally and emotionally unable to file the complaint on time; (3) he timely filed a complaint but in the wrong forum; and (4) Schneider has refused to pay him salary owed and continues to hold his personal belongings.<sup>5</sup> However, the ALJ disagreed and recommended that Schneider's Motion for Summary Decision be granted and that Lee's STAA whistleblower complaint be dismissed.

We review a recommended decision granting summary decision de novo. That is, our review is governed by the same standard the ALJ uses. That standard is found at 29 C.F.R. § 18.40(d) and permits an ALJ to enter summary decision "if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." Thus, we view the evidence in the light most favorable to the non-moving party and then determine whether there are any genuine issues of material fact and whether the moving party is entitled to a summary decision.<sup>6</sup>

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<sup>2</sup> The Secretary of Labor's authority to decide this case has been delegated to the Administrative Review Board. See 49 U.S.C.A. § 31105(b)(2)(C) and Secretary's Order No. 1-2002, 67 Fed. Reg. 64272 (Oct. 17, 2002).

<sup>3</sup> 29 C.F.R. § 1978.102(d) (2001).

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

<sup>5</sup> See Lee's May 28, 2002 letter to ALJ. The ALJ thoroughly and fairly recites Lee's alleged facts in response to Schneider's Motion for Summary Decision. R. D. & O. at 2. Therefore, although we do not adopt the entire R. D. & O., we adopt this portion of it.

<sup>6</sup> See *Stauffer v. Wal-Mart Stores, Inc.*, ARB No. 99-107, ALJ No. 1999-STA-21, slip

Continued . . .

We have examined the allegations Lee claims support his contention that equitable tolling is appropriate. Presuming them to be true, we nevertheless find that they do not create genuine issues of material fact because when we apply the relevant substantive law, Lee's allegations do not establish a sufficient basis to warrant equitable tolling.<sup>7</sup>

Accordingly, because no genuine issues of material fact exist on the issue of whether Lee's complaint was timely filed or whether equitable tolling is applicable, and because Schneider is entitled to summary decision, summary decision is appropriate and the complaint is **DENIED**.

**SO ORDERED.**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

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op. at 2 (ARB Nov. 30, 1999). In his recommended decision, the ALJ failed to set out the standard for a summary decision or to indicate whether he had specifically applied Section 18.40(d). Nor does he indicate whether he had examined the evidence or inferences in the light most favorable to Lee. Furthermore, in several instances, he appears to have weighed the evidence that Lee presented and made findings of fact rather than determining whether genuine issues of material fact exist. See R. D. & O. at 3-5. For example, in discussing Lee's contention that a Schneider official concealed the true nature of his termination, the ALJ states that, "In the instant case, no such concealment occurred. There was no active concealment." Or, "Complainant's second rationale for tolling the statutory period is also unpersuasive," and "I find Complainant's third rationale for his late filing equally unconvincing." See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1985) ("[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.").

<sup>7</sup> Although the ALJ did not explicitly determine whether genuine issues of material fact exist, he did apply relevant and established legal precedent concerning equitable tolling. Therefore, we adopt and incorporate the authorities cited at 3-4 of his Recommended Decision and Order.