U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

JAMES SCHOOLEY,

COMPLAINANT,

v.

ALYESKA PIPELINE SERVICE COMPANY AND CHUGACH NORTH TECHNICAL SERVICES,

[AND]

CHUGACH NORTH TECHNICAL SERVICES,

RESPONDENTS.

ARB CASE NO. 96-139

(ALJ CASE NO. 96-TSC-4)

DATE: AUG 13 1997

ARB CASE NO. 97-122

(ALJ CASE NO. 97-TSC-5)

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER CONSOLIDATING CASES AND ORDER TO SHOW CAUSE

The captioned matters are pending before the Administrative Review Board (Board) for review pursuant to the employee protection provisions of the Toxic Substances Control Act of 1986, 15 U.S.C. §2622 (1988); the Water Pollution Control Act, 33 U.S.C. §1367 (1988); the Solid Waste Disposal Act, 42 U.S.C. §6971 (1988); and the Clean Air Act, 42 U.S.C. §7622 (1988) (collectively, the Acts). On July 3, 1997, Administrative Law Judge (ALJ) Henry B. Lasky issued a Recommended Order of Dismissal in ALJ Case No. 97-TSC5. ALJ Lasky recommended that matter be dismissed with prejudice based on Complainant's failure to respond on or before July 2, 1997 to the ALJ's June 16, 1997 Order to Show Cause why Case No. 97-TSC-5 should not be dismissed for the grounds cited in Respondent Chugach North Technical Services' (Chugach) Motion to Dismiss. Chugach premised its Motion to Dismiss upon the statement in Complainant's June 6, 1997 letter addressed to Respondent, advising "I am not pursuing my U.S. Department of Labor complaint against Chugach North Technical Services.

In the Order to Show Cause issued in Case No. 97-TSC-5, the ALJ specifically advised Complainant that failure to respond to the Order to Show Cause would be deemed a waiver of any objections to granting Respondent's Motion to Dismiss and that the Motion to Dismiss

would be granted. As noted, Complainant did not file a response to the ALJ's Order to Show Cause.

Previously, the Board docketed for review ALJ David W. Di Nardi's June 3, 1996 Recommended Order (R. O.) Dismissing Appeal With Prejudice in ALJ Case No. 96-TSC-4In that matter, the ALJ recommended that case be dismissed with prejudice pursuant to 29 C.F.R. §18.39(b) because Complainant had not responded to any orders issued by the ALJ.

On review, the Board granted Complainant fifteen days to show cause why Case No. 96-TSC-4 should not be dismissed with prejudice based on the failure to respond to the AlYs orders issued in that matter. Subsequently, Complainant requested that the Board stay its review of the R. 0. in Case No. 96-TSC-4, in order that Complainant could participate in the review on remand of certain settlement agreements (including that in *James Schooley v. Alyeska Pipeline Service Company, et al.,* ALJ Case Nos. 94-TSC-10, 95-TSC-12, 95TSC-13, Sec. Fin. Order Approving Settlement Agreement and Dismissing Complaint, Oct. 3, 1995) referenced in and directed for reconsideration pursuant to the Decision and Order of Remand in the matter of *William C. Biddy v. Alyeska Pipeline Service Co.,* ARB Case Nos. 96-109, 97-015, Order of Remand, Aug. 1, 1996, slip op. at 4, 5. We note that the record in Case No. 96-TSC-4 reflects the following terms of Complainant's settlement (at 19), in which Complainant released:

> any and all claims, demands or causes of action [against Alyeska and other respondents] whether known or unknown, and whether or not in litigation, which [Complainant] may have asserted or which could be asserted by another on his behalf, based on any action, omission, or event, that existed or occurred prior to the date of [Complainant's] execution of this Settlement Agreement.

ALJ Di Nardi's R. O. at 3.

The Board granted Complainant's request to stay of our consideration of Case No. 96-TSC-4 on October 11, 1996. The subsequent history of Case No. 96-TSC-4 does not reflect any participation by Complainant in either that case or in the matters to have been reconsidered under the Order of Remand issued in *Biddy*. Complainant has not contacted the Board concerning the issues raised in Case No. 96-TSC-4 or in *Biddy* since August 1996.

Our review of the records in ALJ Case Nos. 96-TSC-4 and 97-TSC-5 demonstrates that Complainant has raised substantially the same allegations in each matter. Complainant, moreover, filed both matters against Chugach, alleging that Chugach had discriminated against him in violation of the employee protection provisions of the Acts. While pending before the ALJ, Alyeska Pipeline Service Company (Alyeska) entered an appearance and alleged that it -- and not Chugach -- was Complainant's employer and that all allegations were settled pursuant to the agreement of Complainant and Alyeska in previous, consolidated, cases, cited above.

Complainant has never answered Alyeska's defenses raised in Case No. 96-TSC-4 before the ALJ. Moreover, given the similarity of parties and Complainant's allegations in both Case Nos. 96-TSC-4 and 97-TSC-5, these two cases appear to be appropriate for consolidation in the interest of judicial and administrative economy. *See, Thomas M. Bonanno v.* Stone & Webster Engineering Corp. and Northeast Utilities d/b/a Northeast Nuclear Energy Co. ALJ Case Nos. 95-ERA-54, 96-ERA-7, ARB Fin. Dec. and Order, Dec. 12, 1996, slip op. at *1. See also* Fed. R.

Civ. P. 42(a), as made applicable by 29 C.F.R. §18.1(a) (1996) and Fed. R. App. P. 3(b). ALJ Case Nos. 96-TSC-4 and 97-TSC-5 are, accordingly, hereby consolidated for decision.

In these matters, there is an extended procedural history of Complainant's noncompliance in the ALJ proceedings below. Further, in his June 6, 1997 letter to Chugach, Complainant stated that he was "not pursuing [his] U.S. Department of Labor Complaint against Chugach North Technical Services." Based on these records, the Board hereby issues the following Order to Show Cause.

Complainant has **fifteen days** from the date of this order to show cause why Case Nos. 96-TSC-4 and 97-TSC-5 should not be dismissed with prejudice by filing his response with the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-4309, Washington, D.C., 20210. If Complainant files a response to this Order to Show Cause, Respondents Chugach and/or Alyeska may file a reply with the Board within 10 days of the date of Complainant's statement.

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