



In the Matter of:

**DONALD C. SMITH,**

**ARB CASE NO. 97-075**

**COMPLAINANT,**

**(ALJ CASE NO. 97-ERA-25)**

**v.**

**DATE: MAR 26 1997**

**TENNESSEE VALLEY AUTHORITY,**

**RESPONDENT.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD<sup>1</sup>

### **ORDER TO SHOW CAUSE**

On March 12, 1997, Administrative Law Judge (ALJ) Lee J. Romero, Jr. issued an Order Granting Summary Decision and Recommended Order of Dismissal in this matter. Complainant had requested a hearing in a previous case (ALJ Case No. 96-ERA-10), seeking to appeal the findings of the District Director that Complainant had failed to establish a *prima facie* case of discrimination under the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988).

Respondent filed a Motion for Summary Decision, averring in part that Case No. 96-ERA-10 was the subject of a settlement agreement dated May 15, 1996.<sup>2</sup> In its motion,

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<sup>1</sup>On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute and the implementing regulations (29 C.F.R. Part 24) to the newly created Administrative Review Board. Secretary's Order 2-96 (Apr. 17, 1996), 61 Fed. Reg. 19978 (May 3, 1996). Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Administrative Review Board now issues final agency decisions. Final procedural revisions to the regulations (61 Fed. Reg. 19982) implementing this reorganization were also published on May 3, 1996.

<sup>2</sup>ALJ Quentin McColgin issued a recommended Order on May 22, 1996 recommending approval of the settlement agreement and dismissal of the complaint. The Administrative Review Board issued a Final Order Approving Settlement Agreement and Dismissing Complaint on June 24, 1996.

Respondent further argued that an ALJ has no authority to review a final order issued by the Administrative Review Board.

ALJ Romero issued an Order to Show Cause why this matter should not be dismissed on February 13, 1997. Complaint filed no response to the ALJ's Order to Show Cause. The ALJ noted that the District Director relied in part upon Respondent's showing that it complied with the provisions of the settlement agreement in Case No. 96-ERA-10 in finding that Complainant had failed to establish a *prima facie* case of discrimination in the instant matter. Stating further that there are no regulatory provisions authorizing an ALI to review final Orders of the Board or the Secretary of Labor, the ALI thereupon issued his Order granting Respondent's Motion for Summary Decision and recommending that Case No. 97-ERA-25 be dismissed with prejudice.

Complainant has **fifteen days** from the date of this order to show cause why this case 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.

**SO ORDERED.**

FOR THE ADMINISTRATIVE REVIEW BOARD:

Gerald F. Krisan, Esq.  
Executive Director  
Telephone: (202) 219-4728  
Facsimile: (202) 219-9315