



In the Matter of:

**EARL VANDORN KEENE,**

**ARB CASE NO. 97-089**

**COMPLAINANT,**

**ALJ CASE NO. 95-ERA-4**

**v.**

**DATE: June 27, 1997**

**EBASCO CONSTRUCTORS, INC.,  
a/k/a RAYTHEON CONSTRUCTORS,  
a/k/a RAYTHEON ENGINEERS AND  
CONSTRUCTORS, INC.**

**RESPONDENTS.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**ORDER**

This case arises under the Energy Reorganization Act of 1974, as amended, 42 U.S.C. § 5851 (1988 and Supp. V 1993) (ERA). On December 11, 1995, the Secretary of Labor issued a Preliminary Order awarding Complainant back pay in the amount of \$1,437.72, with interest, and ordering Respondent to expunge from Complainant's record the "fair" appraisal given him upon his termination in March, 1994.

On February 19, 1997, the Board issued a Decision and Order of Remand affirming the Preliminary Order and awarding an additional \$245.00 for unemployment compensation which was erroneously deducted from Complainant's back pay award. The Board also ruled that Complainant was entitled to an award of costs and expenses, including attorney fees, and remanded the case to the Administrative Law Judge (ALJ) for a recommended decision on the amount to be awarded.

On April 10, 1997, the ALJ issued a decision and order recommending an award of attorney's fees in the amount of \$21,415.63, as well as costs and expenses in the amount of \$6,747.55. On May 6, 1997 the parties submitted a letter of agreement dated April 17, 1997 to the Board stating that the parties agreed to a settlement of the award of attorney's fees, costs, and expenses in the amount of \$25,000. The parties have requested approval of the settlement and dismissal of the complaint.

The letter of agreement does not specify whether Respondent has complied with our previous orders expunging from Complainant's record the "fair" appraisal given him upon his termination and awarding Complainant a total of \$1,682.72 in back pay. The Board must know

whether Respondent has complied with the previous orders so that it can determine if the settlement agreement is fair, adequate and reasonable.

The amount of the back pay award affects not only the Complainant's individual interest, but impacts on the public interest as well, because if the amount is not fair, adequate and reasonable, other employees may be discouraged from reporting safety violations. *See Plumlee v. Alyeska Pipeline Service Co.*, 92-TSC-7, Sec. Dec. and Order; Aug. 6, 1993, slip op. at 5; *Biddy v. Alyeska Pipeline Service Company*, ARB Case Nos. 96-109, 97-015, Order, May 31, 1996, slip op. at 1-2.

The Board also requires that all parties requesting settlement approval of cases arising under the employee protection provisions of the ERA provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim, or to certify that no other such settlement agreements were entered into between the parties. *Biddy v. Alyeska Pipeline Service Company*, ARB Case Nos. 96-109, 97-015, Final Order Approving Settlement and Dismissing Complaint, Dec. 3, 1996, slip op. at 3. Therefore, prior to approving the settlement, the parties are directed to provide the specified additional settlement documentation or certification.<sup>1</sup>

The parties are required to file a joint response to this Order within ten (10) days. If the parties cannot agree upon a joint response, Complainant's counsel is to submit the required information within ten (20) days from the issuance of this Order. Respondents may submit a response within fifteen (30) days of the issuance of this Order. Docket entries for this matter shall be filed by directing submissions to the attention of the undersigned at:

Administrative Review Board  
United States Department of Labor  
200 Constitution Avenue, N.W.  
Room S-4309  
Washington, D.C. 20210

**FOR THE ADMINISTRATIVE REVIEW BOARD:**

Gerald F. Krizan, Esq  
Executive Director

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<sup>1</sup>The parties have already certified to the Board that they do not intend to pursue an appeal of the award of attorney's fees and costs rendered by the ALJ. Letter of April 17, 1997.