



Issue Date: 31 July 2009

Case No. 2009-CAA-5

In The Matter Of:

Richard Pullman,
Complainant

v.

Smithsonian National Air and Space Museum,
Respondent

FINAL ORDER APPROVING SETTLEMENT

This case arises under the whistleblower provision of the Clean Air Act (CAA), 42 U.S.C. § 7622, and the implementing regulations at 29 C.F.R. Part 24. On or about September 22, 2008, the Complainant filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that the Respondent violated the employee protection section of the CAA. OSHA denied the complaint on January 12, 2009, and the Complainant requested a hearing before an administrative law judge.

On July 28, 2009, the parties submitted a Joint Motion for Approval of the Settlement and Restricted Access ("Joint Motion"), as well as a Proposed Order Approving Settlement Agreement, Dismissing the Proceeding with Prejudice, and Directing Confidential Treatment of Settlement ("Proposed Order"), and a Stipulation of Settlement and General Release Filed Under Seal ("Settlement Agreement").

The regulations governing whistleblower complaints under the Clean Air Act provide that at any time after the filing of objections to the Assistant Secretary's findings, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement must be filed with the administrative law judge or the Board, as the case may be. Any settlement approved by the Administrative Law Judge will constitute the final order of the Secretary and may be enforced pursuant to § 24.113. 29 C.F.R. § 24.111(d)(2) and (e).

The parties state that the Settlement Agreement contains confidential commercial, financial, and personal information, as defined under the Freedom of Information Act, 5 U.S.C. § 552, and request that the Settlement Agreement be maintained in a restricted access portion of the record at all times, pursuant to 29 C.F.R. § 18.56. The parties also request that the Settlement Agreement be subject to pre-disclosure notification, such that the Department of Labor will promptly notify the parties of any Freedom of Information Act request that seeks disclosure of

the Settlement Agreement or its terms, and provide the parties with a reasonable opportunity to review and respond to the requested or proposed disclosure.

After careful consideration of the settlement agreement, I find the terms of the agreement to be a fair, adequate, and reasonable settlement of the complaint.¹ I note that the Settlement Agreement has been signed by the Complainant, as well as his attorney, a representative of the Respondent, and Respondent's counsel. The settlement agreement in this case will be placed in a restricted access portion of the record pursuant to 29 C.F.R. § 18.56, and will be marked as having been designated as confidential commercial or financial information subject to predisclosure notification under 29 C.F.R. § 70.26. Should a FOIA request for the agreement be filed, the parties will be afforded an opportunity to review and comment upon the requested or proposed disclosure.

Finally, pursuant to 29 C.F.R. § 24.111, this Order constitutes the final order of the Secretary.

Accordingly, I **APPROVE** the Settlement Agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

A

LINDA S. CHAPMAN
Administrative Law Judge

¹ Under the Age Discrimination in Employment Act, 29 U.S. C. § 626, et seq., the Complainant had until July 30, 2009 to rescind his agreement. As I have received no notice of rescission, I consider the settlement agreement to be final and ripe for review and approval.