

U.S. Department of Labor

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Issue Date: 18 March 2016

**CASE NOS.: 2004-CAA-00007
2009-ERA-00008
2011-CAA-00004
2012-ERA-00001
2012-CAA-00003
2012-ERA-00016
2013-CAA-00004
2013-CAA-00005
2014-CAA-00001**

**In the Matter of:
SHARYN A. ERICKSON,
Complainant,**

v.

**U.S. ENVIRONMENTAL PROTECTION AGENCY,
Respondent.**

**DECISION AND ORDER APPROVING SETTLEMENT
AGREEMENT AND DISMISSING COMPLAINTS**

These consolidated cases arise under the employee protection provisions of the Clean Air Act, 42 U.S.C. §7622; and various other environmental protection statutes¹ (all of which have implementing regulations appearing at 29 C.F.R Part 24 as amended).² A hearing in the above-captioned matters (together with the damages and hostile work environment allegations from a previous group of cases)³ scheduled to be held from March 8 to 18, 2016 in Atlanta, Georgia was canceled so that the parties could engage in settlement negotiations before a mediator, in

¹ The other statutes relied upon are CERCLA, 42 U.S.C. §9610; the Safe Drinking Water Act (SDWA), 42 U.S.C. §300j-9; the Solid Waste Disposal Act (SWDA), 42 U.S. C. §6971; the Toxic Substances Control Act (TSCA), 15 U.S.C. §2622; and the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §1367.

² Although OSHA cited to the Energy Reorganization Act of 1974, as amended, 42 U.S.C. §5851 (“ERA”), and three of the cases were captioned to reflect that they are ERA cases, none of the matters concerned here relate to nuclear energy or the ERA.

³ In addition to Case No. 2004-CAA-00007, the first group of cases includes Case Nos. 2004-CAA-00011, 2005-CAA-00010, 2005-CAA-00012, 2005-CAA-00015, 2006-CER-00003, and 2007-CER-00002. Collectively, those cases constitute “Erickson III.” With the exception of Case No. 2004-CAA-00007 and the issues of hostile work environment and damages incorporated therein, those cases were dismissed by my December 29, 2014 Decision and Order Granting in Part and Otherwise Dismissing First Set of Complaints Except for Hostile Work Environment Allegations.

accordance with Chief Judge Stephen Henley's Order Appointing Mediator of February 16, 2016. The mediation ended successfully, and Chief Judge Henley issued a Supplemental Order Concluding Mediation on March 1, 2016. By facsimile communication of March 8, 2016, the parties filed a Joint Submission of Settlement Agreement executed by both parties, together with a Settlement Agreement executed by both parties.⁴ As set forth below, I am now approving the Settlement Agreement.

Background

The complicated procedural history of these cases and the other cases brought by Complainant Erickson is set forth in detail in the Decision and Order Granting in Part and Otherwise Dismissing First Set of Complaints Except for Hostile Work Environment Allegations, issued by the undersigned administrative law judge on December 29, 2014 [hereafter "Prior Decision"], which is incorporated by reference herein. The Prior Decision resolved the first group of cases pending before the undersigned administrative law judge ("Erickson III"), except for the hostile work environment allegations and damages issues, which were merged into Case No. 2004-CAA-00007 and consolidated with the other cases listed in the caption for hearing purposes ("Erickson IV").⁵ Erickson IV (including the cases listed in the caption and the hostile work environment allegations and damages issues from Erickson III) is resolved by the Settlement Agreement. The complaints in Erickson I and Erickson II were ultimately dismissed.⁶ An additional group of claims is still pending before OSHA; those claims are also resolved by the Settlement Agreement. In other words, the Settlement Agreement resolves all pending cases and claims arising under the environmental statutes.

Discussion

Settlements in certain environmental whistleblower cases (including cases brought under the Clean Air Act, the Safe Drinking Water Act, and the Toxic Substances Control Act) must be filed with the presiding administrative law judge and reviewed to determine whether they are fair, adequate and reasonable. 29 C.F.R. §24.111(d)(2). Compare *Hoffman v. Fuel Economy Contracting*, 1987-ERA-33 (Sec'y Aug. 4, 1989) (Order) (requiring that settlements in whistleblower cases brought under the Energy Reorganization Act be reviewed to determine whether they are fair, adequate and reasonable) with *Indiana Dept. of Workforce Development v. U.S. Dept. of Labor*, 1997-JTP-15 (Admin. Review Bd. Dec. 8, 1998) (holding ALJ has no authority to require submission of settlement agreement in Job Training Partnership case when parties have stipulated to dismissal under Rule 41(a)(1)(A)(ii), FRCP, and contrasting ERA cases.) The regulations applicable to environmental whistleblower cases at section 24.111 provide, in relevant part:

⁴ As the first line was cut off on the facsimile, I had my law clerk request a complete copy, which was transmitted.

⁵ See footnote 3 above.

⁶ On July 14, 2008, the U.S. Court of Appeals for the Eleventh Circuit affirmed the Administrative Review Board's dismissal of the complaints in Erickson I (ARB Case Nos. 03-002, 03-003, 03-004; ALJ Case Nos. 1999-CAA-2; 2001-CAA-8, -13; 2002-CAA 3, -18) and Erickson II (ARB Case Nos. 04-024, 04-025; ALJ Case Nos. 2003-CAA-11, 2003-CAA-19, 2004-CAA-1). *Erickson v. U.S. Department of Labor*, No. 06-14120 (11th Cir. July 14, 2008) (unpub.) The Eleventh Circuit denied Complainant's rehearing petition on October 7, 2008. *Erickson v. U.S. Department of Labor*, No. 06-14120-EE (11th Cir. Oct. 7, 2008).

(d). . . .

(2) *Adjudicatory settlements under the Energy Reorganization Act, the Clean Air Act, the Safe Drinking Water Act, and the Toxic Substances Control Act.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the judge, or by the ARB if the ARB has accepted the case for review. A copy of the settlement must be filed with the administrative law judge or the ARB, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the ARB will constitute the final order of the Secretary and may be enforced pursuant to §24.113.

29 C.F.R. §24.111(d), (e).

Confidentiality Clause. The Settlement Agreement contains a confidentiality provision. The parties are advised that records in whistleblower cases are agency records which the agency must make available for public inspection and copying under the Freedom of Information Act (FOIA), 5 U.S.C. §552, and the Department of Labor must respond to any request to inspect and copy the record of this case as provided in the FOIA. *See generally Seater v. Southern California Edison Co.*, 1995-ERA-13 (ARB Mar. 27, 1997). The Settlement Agreement will, however, remain confidential to the extent permissible by law.

Other Claims or Causes of Action. To the extent that the Settlement Agreement may be deemed to relate to claims not pending before me or to matters arising under laws other than the environmental statutes, I have limited my review to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegations that the Respondent violated the environmental statutes. *See, e.g., Poulos v. Ambassador Fuel Oil Co., Inc.*, 1986-CAA-1 (Sec'y Nov. 2, 1987).

Having reviewed the terms of the Settlement Agreement, I find that the settlement is fair, reasonable, and adequate, and that it should be approved. Under 29 C.F.R. §24.111(e), this Decision and Order will become the final order of the Secretary of Labor and is enforceable as such.

ORDER

IT IS HEREBY ORDERED that the Settlement Agreement be, and hereby is **APPROVED**, and the parties shall comply with its terms to the extent that they have not already done so; and

IT IS FURTHER ORDERED that the above-captioned matters be, and hereby are **DISMISSED WITH PREJUDICE**.

PAMELA J. LAKES
Administrative Law Judge

Washington, D.C.