



Issue Date: 02 April 2014

Case No.: 2013-ERA-00012

In the Matter of:

**GARTH McNICHOL,
Claimant,**

v.

**ENERCON SERVICES, INC.,
Employer,**

DECISION AND ORDER APPROVING SETTLEMENT

This case arises under the Energy Reorganization Act of 1974, as amended ("ERA"), which provides whistleblower protections to certain employees for engaging in certain protected activities. 42 U.S.C. § 5851. On February 27, 2014, the parties submitted a "Settlement Agreement and Release." The Motion and attached Settlement Agreements are incorporated herein by reference.

My review of the settlement agreement is limited to a determination of whether its terms are fair, adequate and reasonable. The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to the public interest.

Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties' submissions in the case, including the settlement agreements, become a part of the record in this case and are subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552 (1988). FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. *Gerald Fish v. H and R Transfer*, ARB No. 01-071; ALJ Case No. 00-STA-56 (ARB April 30, 2003).

The parties in this matter have indicated that the settlement agreement comprises and includes confidential information which may be exempt from disclosure under FOIA. The Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of requests and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. §70.26. The settlement agreement in this case will be placed in a separate envelope and identified as being confidential commercial information pursuant to the parties' request.

After careful consideration of the settlement agreement, I find that none of the terms or conditions are unacceptable. Moreover, I find the terms of the agreement to be fair and reasonable and adequately protect Claimant. I find it is in the public interest to approve this agreement as a basis for administrative disposition of this case and therefore approve the settlement agreement.

ACCORDINGLY, it is hereby **ORDERED** that:

1. The “Settlement Agreement and Release” is **APPROVED**;
2. The complaint is **DISMISSED** with prejudice; and the “Settlement Agreement and Release” shall be treated as confidential financial information pursuant to 29 C.F.R. § 70.26 and handled as set forth in the regulations.

CHRISTINE L. KIRBY
Administrative Law Judge