

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 28 October 2014

CASE NO.: 2014-ERA-00005

In the Matter of:

EDWINA A. COLLINS
Complainant,

v.

DOMINION NUCLEAR CONNECTICUT, INC.
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT AND ORDER
DISMISSING COMPLAINT WITH PREJUDICE**

This matter arises under the employee protection provisions of the Energy Reorganization Act of 1974, U.S. Code, Title 42, § 5851 (ERA) and its implementing regulations at 29 CFR Part 24.

The Complainant filed a complaint with OSHA on August 15, 2011, alleging various adverse actions and filed an additional complaint on October 2, 2011. The complaints were investigated and on June 5, 2014, the Occupational Safety and Health Administration, Hartford Office, dismissed the complaints when the Regional Administrator issued the Secretary's Findings that Complainant had not suffered an adverse employment action and Complainant's protected activity was not a contributing factor in the alleged adverse action. On June 18, 2014, the Complainant filed her objections to the Secretary's decision and requested a hearing before an Administrative Law Judge.

At the request of the Parties, a settlement judge was appointed on September 4, 2014 pursuant to 29 CFR §18.9(e). The Parties came to an agreement in principle on October 7, 2014 and, on October 21, 2014, the Parties filed their "Joint Motion for Approval of Settlement Agreement, Dismissal with Prejudice, and Confidential Treatment of Settlement Agreement" (Settlement Agreement) with this office.

Implementing Federal regulations at 29 CFR § 24.111 (d)(2) provide that "[a]t 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 agreement must be filed with the Administrative Law Judge or the

ARB, as the case may be.” In reviewing the Settlement Agreement, the Administrative Law Judge must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant’s allegations that the Respondent violated the ERA. *See* 42 U.S.C. § 5851(b)(2)(A); *Holbrook v. Fluor Daniel Northwest, Inc.*, ARB No. 98-099, ALJ No. 1998-ERA-00004 (ARB Mar. 24, 1998). Once the settlement agreement is approved, it becomes the final action of the Secretary, 29 CFR § 24.111(e).

The ERA provides that pursuit of rights and remedies under the ERA does not diminish or affect any right available under other federal or state laws designed to redress the employee’s discharge or other discriminatory action taken by the employer against the employee. However, when evaluating the appropriateness of actions under the ERA, any prior actions taken under other redress for the same events and course of conduct, including a collective bargaining agreement, must “be equitably structured such that it is offset by any arbitration award ordered for the same relief to avoid duplicative recovery.” *Lucia, Abernathy and Cowles v. American Airlines, Inc.*, ARB Case Nos. 10-014 / 015 / 016, at page 8 (Sep. 16, 2011); ALJ Case Nos. 2009-AIR-017 / 016/015 (Oct 15, 2009).

After review of the Settlement Agreement, this Administrative Law Judge finds that the Settlement Agreement complies with the standard required under the ERA and is approved. After review of the parties’ joint request that the Settlement Agreement be kept confidential because it contains confidential commercial and personal information, this Administrative Law Judge finds that the Settlement Agreement shall be treated in accordance with 29 CFR § 70.26 and 5 U.S.C. §§ 552(b)(4) and (b)(6) and that there be restricted access to the parties’ confidential agreement pursuant to 29 CFR § 18.56. The Court shall place the parties’ Settlement Agreement in a sealed envelope in a separate file and mark it as containing confidential information to avoid improper disclosure pursuant to 29 CFR §§ 18.56 and 70.26 and 5 U.S.C. §§ 552(b)(4) and (b)(6).

ORDER

Accordingly, it is **ORDERED** that:

1. The Settlement Agreement is **APPROVED**; and
2. The Complaint is hereby **DISMISSED WITH PREJUDICE**.
3. The Parties’ request for confidential treatment of the Settlement Agreement is **APPROVED**.

SO ORDERED.

TIMOTHY J. McGRATH
Administrative Law Judge