



Issue Date: 10 April 2014

Case No.: 2014-ERA-00002

In the Matter of:

LERAY T. DANDY,

Complainant,

v.

GE-HITACHI NUCLEAR ENERGY AMERICAS, LLC,

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 24.¹

The Complainant filed a complaint on 11/7/11 alleging that Respondent retaliated against him in violation of the ERA by giving him a negative performance appraisal, denied him a merit salary increase, and placed him on a performance improvement plan (PIP) in reprisal for reporting possible calculation errors and integrity concerns which potentially violated Nuclear Regulatory Commission (NRC) regulations. The complaint was investigated and on 11/21/13, the Occupational Safety and Health Administration, Atlanta Regional Office, dismissed the complaint when he issued the Secretary's Findings that "there is no reasonable cause to believe that Respondent violated the [ERA]." On 1/3/14, the Complainant filed his objections to the Secretary's decision and requested a hearing before an Administrative Law Judge.

On March 28, 2014, the Parties filed their "Confidential Release and Settlement Agreement" (Settlement Agreement) with this office.

¹ Federal Register, Volume 76, pages 2808 to 2826 (January 18, 2011)

Implementing Federal regulations at 29 CFR §24.111(d)(2) provides 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, as well as the administrative record, 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 Confidential Settlement Agreement be kept confidential because the settlement agreement contains confidential business and personal information, this Administrative Law Judge finds that the Confidential Settlement Agreement shall be treated in accordance with 29 CFR Section 70.26 and 5 CFR Sections 552(b)(4) and (b)(5) and that there be restricted access to the parties’ confidential agreement pursuant to 29 CFR Section 18.56. The Court shall place the parties’ Confidential 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 Sections 18.56 and 70.26 and 5 CFR Sections 552(b)(4) and (b)(5).

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 restricted access to the Confidential Settlement Agreement is **APPROVED.**

DANA ROSEN
Administrative Law Judge

DR/JRS/jcb
Newport News, Virginia