

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

Issue Date: 07 June 2018

CASE NO.: 2017-ERA-00010

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*In the Matter of:*

KEITH JASON MAXWELL,  
*Complainant,*

v.

ENTERGY NUCLEAR OPERATIONS, INC.,  
*Respondent.*

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**DECISION AND ORDER APPROVING SETTLEMENT**

This proceeding arises from a complaint of discrimination filed under Section 211 of the Energy Reorganization Act of 1974 (the “ERA”), 42 U.S.C. § 5851 and the procedural regulations found at 29 C.F.R. Part 24 (2008). On September 8, 2017, the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), acting as agent for the Secretary of Labor (“Secretary”), issued a letter dismissing the Complainant’s complaint. By letter dated September 8, 2017, the Complainant objected to the Secretary’s findings and requested a de novo hearing before an administrative law judge pursuant to 29 C.F.R. § 24.106 (2011). Prior to the scheduled trial set for June 6, 2018, the parties advised they resolved the matter and were given time to prepare the appropriate documentation.

On June 4, 2018, the parties filed their “Joint Motion For Approval of Settlement, Dismissal With Prejudice, and Confidential Treatment of Settlement Agreement” (hereinafter “Settlement Agreement”).

In reviewing the Settlement Agreement, I must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant’s allegations that the Respondent violated the ERA whistleblower provisions. I find the Settlement Agreement complies with the standard required and it is APPROVED pursuant to 29 C.F.R. § 24.111(d)(2), subject to my comments below.

The parties assert pre-disclosure notification rights in accordance with 29 C.F.R. § 70.26. Pursuant to the parties’ request, the copy of the Settlement Agreement will therefore be maintained in a separate envelope that is identified as being “Personal Private Information” and “Confidential Commercial and Financial Information.” See *Duffy v. United Commercial Bank*, 2007-SOX-00063 (Oct. 23, 2007). I find the Settlement Agreement contains financial

information and business information that is privileged or confidential within the meaning of 29 C.F.R. §70.2(j), as well as personal information relating to the Complainant.

As to confidentiality, the parties are advised that notwithstanding the confidential nature of the Settlement Agreement, all of their filings, including the Settlement Agreement, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.* The Administrative Review Board noted that:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine *at the time a request is made* whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

*Seater v. S. Cal. Edison Co.*, USDOL/OALJ Reporter (PDF), ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

Two additional points require my brief attention. First, the Settlement Agreement contains a choice of law provision naming the Commonwealth of Massachusetts as the law which shall govern interpretation of the Settlement Agreement, without regard to the conflict of law provisions thereof. The choice of law provision shall be construed as not limiting the authority of the Secretary of Labor or any federal court. *See Phillips v. Citizens. Assoc. for Sound Energy*, Case No. 1991-ERA-00025, slip op. at 2 (*Sec’y* Nov. 4, 1991).

I also note my authority over settlement agreements is limited to the statutes within my jurisdiction as defined by the applicable statute. Therefore, I approve only the terms of the Settlement Agreement pertaining to Mr. Maxwell’s current ERA case, 2017-ERA-00010. *Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011). Accordingly, it is **ORDERED** that:

- (1) The parties’ request to approve the Settlement Agreement is **GRANTED**;
- (2) The Settlement Agreement is **APPROVED**;
- (3) The Settlement Agreement shall be designated as confidential and maintained in a separate sealed envelope, subject to the procedures requiring disclosure under FOIA; and
- (4) The Complaint of Keith J. Maxwell is **DISMISSED WITH PREJUDICE**.

**SO ORDERED.**

**TIMOTHY J. McGRATH**  
Administrative Law Judge

Boston, Massachusetts