



Issue Date: 27 March 2019

CASE NO.: 2019-ERA-00002

In the Matter of:

GARY D. GOINS,
Complainant,

v.

BECHTEL CORPORATION,
Respondent.

ORDER DISMISSING COMPLAINT

This matter arises under the employee “whistle blower” protection provisions of the Energy Reorganization Act of 1974, U.S. Code, Title 42, § 5851 (“ERA”) and its implementing regulations at 29 C.F.R., Part 24. It is not presently scheduled for hearing.

On December 4, 2018, I issued a Notice of Assignment and Order for Particulars, directing Complainant Gary D. Goins to provide information in support of his complaint. Specifically, I ordered him to articulate (1) what protected activity he alleges he engaged in that led to an adverse employment action; (2) when he engaged in that activity; (3) when Bechtel had knowledge that he engaged in that activity; (4) what adverse employment action he suffered as a result of engaging in protected activity; and (5) when the adverse action(s) occurred.

On December 26, 2018, Mr. Goins filed a hand-written response with 93 attached pages. The pages attached to that response included email communications between Mr. Goins and Bechtel managers, and emails from Mr. Goins to the Department of Labor Inspector General; also included were various payroll documents and records related to Mr. Goins’ problem with his time card. The filing appeared to show that Mr. Goins’ dispute with Bechtel was related to time and attendance issues, and not to any activity that is protected under the ERA. Accordingly, on January 8, 2019, I ordered Mr. Goins to provide evidence that he engaged in one or more activities protected under 42 U.S.C. § 5851(a)(1)(A)-(F), and to do so within 21 days of the date of the order. Mr. Goins has not responded to the January 8 order.

The ERA provides in pertinent part:

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of

employment because the employee (or any person acting pursuant to a request of the employee)-

(A) notified his employer of an alleged violation of this chapter or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

(B) refused to engage in any practice made unlawful by this chapter or the Atomic Energy Act of 1954, if the employee has identified the alleged illegality to the employer;

(C) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or the Atomic Energy Act of 1954;

(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;

(E) testified or is about to testify in any such proceeding or;

(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this chapter or the Atomic Energy Act of 1954, as amended.

42 U.S.C. § 5851.

The activity in which Mr. Goins engaged consisted of contacting the Department of Labor Inspector General regarding Bechtel's questioning of certain time off he requested and/or took. Nothing he has provided relates to any violation of the Energy Reorganization Act or of the Atomic Energy Act of 1954; none of it shows that he engaged in any of the acts listed in 42 U.S.C. § 5851(a)(1)(A)-(F) above. From the information provided by Mr. Goins, I find and conclude that he did not engage in any activity related to nuclear safety issues; instead, he was unhappy with Bechtel's response to his time and attendance problems. Accordingly, I find that he has failed to state a claim on which relief can be granted. *See* 29 C.F.R. § 18.70(c). Therefore IT IS ORDERED that the complaint of Complainant Gary D. Goins brought under the ERA is DISMISSED.

SO ORDERED.

PAUL C. JOHNSON, JR.
District Chief Administrative Law Judge

PCJ, Jr./ksw
Newport News, Virginia

NOTICE OF APPEAL RIGHTS: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board ("the Board") within 10 business days of the date of this decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

The date of the postmark, facsimile transmittal, or e-filing will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. See 29 C.F.R. §§ 24.109(e) and 24.110.