

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

Issue Date: 27 November 2015

ALJ NO.: 2015-FDA-00005

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*In the Matter of:*

**KIM HENLEY,**  
*Complainant,*

v.

**HOLMES REGIONAL MEDICAL CENTER,**  
*Respondent.*

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

This proceeding arises from a complaint of discrimination filed under FDA Food Safety Modernization Act, 21 U.S.C. § 399d (2011) (“FSMA”) and the procedural regulations found at 29 C.F.R. 1987.100, *et seq.* (2015). On May 11, 2015, the Regional Administrator for the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), acting as agent for the Secretary of Labor (“Secretary”), issued an order finding no reasonable cause to believe the Respondent violated the FSMA and the complaint was dismissed. On June 8, 2015, the Complainant, via facsimile, filed objections to the Secretary’s preliminary order and requested a hearing pursuant to 29 C.F.R. §1987.106(a).

The formal hearing was set for January 25, 2016 in Orlando, Florida, but was subsequently cancelled when the parties filed a notice of settlement. On November 12, 2015, counsel for the Respondent submitted a cover letter along with a document entitled: “Joint Motion for Approval of Settlement and Dismissal of Proceeding” (hereinafter “Stipulation”). Because the cover letter seeks to seal the Stipulation and keep the terms of the settlement confidential, I will treat the letter as a joint motion to seal the Stipulation and keep the terms of the settlement confidential.

In reviewing the Stipulation, I must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant’s allegations that the Respondent violated the

FSMA whistleblower provisions. *See* 29 C.F.R. § 1987.111(d)(2). I find that the Stipulation complies with the standard required and it is APPROVED pursuant to 29 C.F.R. § 1987.111(d)(2), subject to my comments below.

Considering the request to seal and keep confidential, the Respondent asserted its pre-disclosure notification rights in accordance with 29 C.F.R. § 70.26, and the copy of the Stipulation therefore is being maintained in a separate envelope and identified as being confidential commercial information pursuant to the parties' request. *See Duffy v. United Commercial Bank*, 2007-SOX-00063 (Oct. 23, 2007). In this regard, I find that the Stipulation 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.

With regard to confidentiality of the Stipulation, the parties are advised that notwithstanding the confidential nature of the Stipulation, all of their filings, including the Stipulation, 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.A. § 552 *et seq.* The Administrative Review Board has 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.

The parties have also requested that access to the Stipulation be restricted by the undersigned under 29 C.F.R. § 18.56 (Restricted Access). I find good cause for such restricted access and the Stipulation will be so maintained under that authority in the sealed envelope. *See* 29 C.F.R. §§ 18.56 & 70.26. *See Sharp v. The Home Depot, Inc.*, ALJ No. 2006-SOX-00129, 2008 DOLSOX LEXIS 4, at \*3 (ALJ Jan. 16, 2008).

The Stipulation also contains a choice of law provision naming the State of Florida 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 Ass'n for Sound*

*Energy*, Case No. 1991-ERA-00025, slip op. at 2 (Sec’y Nov. 4, 1991). Additionally, there are provisions in the Settlement Agreement that go beyond the FSMA, like the issues surrounding the Complainant’s pending EEOC charge. I note that my authority over settlement agreements is limited to the statutes that are within my jurisdiction as defined by the applicable statute. Therefore, I approve only the terms of the Agreement pertaining to Henley’s current FSMA case, 2015-FDA-00005. *Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

Upon consideration of the Stipulation and the record in this proceeding, I find that the terms and conditions are fair, adequate, and reasonable under FSMA. The terms adequately protect Ms. Henley and it is in the public interest to approve the Stipulation as a basis for administrative disposition of this case. Accordingly, it is **ORDERED** that:

- (1) The request to seal and keep the Stipulation confidential is **GRANTED**;
- (2) The motion to approve the Stipulation is **GRANTED**;
- (3) The Stipulation is **APPROVED**;
- (4) The Stipulation shall be designated as confidential subject to the procedures requiring disclosure under FOIA; and
- (5) The Complaint of Kim Henley is **DISMISSED WITH PREJUDICE**.

**SO ORDERED.**

**JONATHAN C. CALIANOS**  
Administrative Law Judge

Boston, Massachusetts