U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 20 April 2016

In the Matter of
DAVE BAKER
Complainant

v. Case No. **2014 FRS 00008**

CHICAGO, FORT WAYNE AND EASTERN RAILROAD
Respondent

Louis E. Jungbauer, Esquire and David A. Brandis, Esquire
For Complainant
Lee A. Lastovich, Esquire
For Respondent Railroad

ORDER APPROVING SETTLEMENT

This case comes under the Federal Rail Safety Act, 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 ("9/11 Act"), Pub. L. No. 110-53. (Aug. 3, 2007 and was scheduled for hearing May 10, 2016 in Minneapolis, Minnesota. On February 25, 2016, I was advised by the parties that the case has settled and that the hearing was unnecessary and cancelled the hearing.

On April 14, 2016, the parties submitted a fully executed settlement agreement. Although the settlement contains a general release, my jurisdiction is limited to the FRSA. Having been advised of the settlement amount and reviewed the settlement agreement, I find the provisions are fair, adequate and not contrary to public interest. In approving this settlement, I am in no way determining Medicare's interests in this matter. The parties assert that amount in question does not invoke the Medicare Secondary Payer Act (MSP) found at 42 U.S.C. § 1395y(b)(2) and its implementing regulations at 42 C.F.R. § 411.

I find that the amount of the settlement is adequate, the settlement is in claimant's best interest, and was not procured under duress. Further, the settlement supports a finding that the complaint be dismissed with prejudice.

Accordingly, it is ORDERED that:

1. The Settlement Agreement is **APPROVED**; and

2. The complaint is **DISMISSED WITH PREJUDICE**.

Digitally signed by Daniel Solomon
DN: CN=Daniel Solomon, OU=Administrative Law Judge, O=US DOL Office of Administrative Law Judges, L=Washington, S=DC, C=US
Location: Washington DC

DANIEL F. SOLOMON
ADMINISTRATIVE LAW JUDGE

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1982.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1982.110(a).

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: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) 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.

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: (1) 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 (2) 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, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

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.

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1982.110(a).

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1982.109(e) and 1982.110(a). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1982.110(a) and (b).