



Issue Date: 03 January 2011

CASE NO. 2010-SOX-00041

In the Matter of:

LESLIE E. HAYDEN,
Complainant,

v.

CONCUR TECHNOLOGIES, INC.,
Respondent.

ORDER APPROVING SETTLEMENT

This case arises under the Corporate and Criminal Fraud and Accountability Act, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A, *et seq.* and the implementing regulations at 29 C.F.R. § 1980 (“SOX”), which provides whistleblower protections to certain employees for engaging in certain protected activities. 42 U.S.C. § 5851. On December 29, 2010, the parties submitted a “Joint Motion to Dismiss All Claims with Prejudice Based on Settlement Agreement and Joint Motion for Settlement Approval of All Settlement Terms” and a signed Settlement Agreement, which resolves all issues raised in the Complaint, for review and approval by the undersigned administrative law judge. The Motion and attached Settlement Agreement are incorporated herein by reference.

My review of the settlement agreement is limited to a determination of whether its terms are fair, adequate and reasonable. The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to the public interest.

Paragraph 7 provides that the agreement shall be governed and construed under the laws of the State of Washington. This choice of law provision is construed as not limiting the authority of the Secretary of Labor and any Federal court, which shall be governed in all respects by the laws and regulations of the United States. See *Phillips v. Citizens. Ass.n for Sound Energy*, No. 91-ERA-25, slip op. at 2 (Sec.y Nov. 4, 1991).

Section 7 of the settlement agreement provide that Complainant will keep the existence and terms of the settlement agreement confidential, with certain specified exceptions.

Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties’ submissions in the case, including the settlement agreement, become a part of the record in this case and are subject to the Freedom of Information Act (“FOIA”), 5 U.S.C. §552 (1988). FOIA requires agencies to disclose requested records unless

they are exempt from disclosure under FOIA. *Gerald Fish v. H and R Transfer*, ARB No. 01-071; ALJ Case No. 00-STA-56 (ARB April 30, 2003).

The parties in this matter have indicated that the settlement agreement comprises and includes confidential information which may be exempt from disclosure under FOIA. The Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of requests and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. §70.26. The settlement agreement in this case will be placed in a separate envelope and identified as being confidential commercial information pursuant to the parties' request.

After careful consideration of the settlement agreement, I find that none of the terms or conditions are unacceptable. Moreover, I find the terms of the agreement to be fair and reasonable and adequately protect Ms. Hayden. Furthermore, I believe it is in the public interest to approve the agreement as a basis for administrative disposition of this case and I therefore approve the settlement agreement.

Accordingly, this case is **DISMISSED** with prejudice.

A

Russell D. Pulver
Administrative Law Judge