



Issue Date: 21 September 2015

CASE NO.: 2015-SOX-00017

In the Matter of:

**RUSSELL HOUGHAM,
Complainant,**

v.

**DOUGLAS QUIKUT, SCOTT FETZER, and
BERKSHIRE HATHAWAY, INC.,
Respondents.**

FINAL ORDER OF DISMISSAL

On August 25, 2015, the parties jointly submitted a Stipulation of Dismissal signed by counsel for both parties. The Stipulation provides that “this case is voluntarily dismissed with prejudice, each party to bear its own costs.” No supporting authority was cited. However, as amended, section 1980.111(c) of title 29, C.F.R., provides:

(c) At any time before the Assistant Secretary’s findings and/or order become final, a party may withdraw objections to the Assistant Secretary’s findings¹ and/or order by filing a written withdrawal with the [administrative law judge]. If the case is on review with the [Administrative Review Board], a party may withdraw a petition for review of an ALJ’s decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary’s findings and/or order, and there are no other pending objections, the Assistant Secretary’s findings and/or order will become the final order of the Secretary. . . . If the objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

¹ Although the regulation refers to “the Assistant Secretary’s findings and/or order,” the Secretary’s Findings in this case were issued by “the Secretary of Labor, acting through his agent, the Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region VI” and appear in the OSHA Regional Supervisory Investigator’s correspondence of April 17, 2015.

29 C.F.R. §1980.111(c), as amended, 80 Fed. Reg. 11865 (March 5, 2015). *See also* 29 C.F.R. §1980.111(d). *Compare Hoffman v. Fuel Economy Contracting*, 1987-ERA-33 (Sec’y Aug. 4, 1989) (Order) (requiring that settlement in whistleblower cases brought under the Energy Reorganization Act be reviewed to determine whether they are fair, adequate and reasonable) *with Indiana Dept. of Workforce Development v. U.S. Dept. of Labor*, 1997-JTP-15 (Admin. Review Bd. Dec. 8, 1998) (holding ALJ has no authority to require submission of settlement agreement in Job Training Partnership case when parties have stipulated to dismissal under Rule 41(a)(1)(ii), FRCP, and contrasting ERA cases.)

As it was unclear whether a settlement was involved, the undersigned administrative law judge issued an Order Requiring Response and Requiring Submission of Any Settlement Agreement for Approval on September 10, 2015. The Order specifically required that the parties advise whether this matter has been settled and if so, submit the settlement for approval.

By letter of September 16, 2015, filed on September 17, 2015, counsel for Respondents, on behalf of both parties, responded to the Order Requiring Response and Requiring Submission of Any Settlement Agreement for Approval of September 10, 2015, and verified that no settlement has been entered into by the parties and that “Complainant has withdrawn the allegation.” This matter will therefore be dismissed.

Accordingly, good cause having been shown, Complainant’s request for withdrawal of his hearing request will be granted and this case will be dismissed. The April 17, 2015 findings of the Regional Administrator of OSHA, on behalf of the Secretary of Labor, that “there is no reasonable cause to believe Respondent[s] violated SOX,” will therefore become final.

ORDER

IT IS HEREBY ORDERED that the above-captioned matter be, and hereby is **DISMISSED WITH PREJUDICE**.

PAMELA J. LAKES
Administrative Law Judge

Washington, D.C.