



Issue Date: 06 December 2018

OALJ Case No.: 2016-SPA-00003
OSHA Case No.: 6-0150-16-057

In the Matter of:

JASON B. MEEKS,
Complainant,

v.

GENESIS MARINE, LLC,
Respondent.

ORDER APPROVING SETTLEMENT

This matter arises under the Seaman’s Protection Act (“SPA”), 46 U.S.C. § 2114, as amended by Section 611 of the Coast Guard Authorization Act of 2010, P.L. 111-281, (“SPA”), and the regulations promulgated thereunder at 29 C.F.R. Part 1986, which are employee protective provisions.

Complainant filed a complaint with the Secretary of Labor on April 25, 2016 and a supplemental complaint that appears to have been submitted the same day alleging that Respondent terminated his employment after he engaged in protected activity under the SPA. In a decision dated August 30, 2016, the Regional Administrator for the Occupational Safety and Health Administration (“OSHA”), Region VI, dismissed the complaint finding that Complainant had not engaged in protected activity under the SPA. In a letter dated September 16, 2016, Complainant requested a formal hearing before the Office of Administrative Law Judges (“OALJ”). On November 30, 2016, I issued a Notice of Docketing and Prehearing Order setting this case for hearing in or near Nashville, Tennessee, on April 11, 2017.

On September 29, 2016, Respondent submitted a Motion to Dismiss contending that Complainant failed to state a claim upon which relief can be granted. Specifically, Respondent asserted that Complainant failed to allege that he engaged in any activity that is protected under the SPA. Complainant filed a response to Respondent’s Motion on October 5, 2016, and submitted two affidavits dated October 6, 2016 and October 12, 2016. Respondent submitted a reply to Complainant’s Response dated October 18, 2016.

On December 12, 2016, I granted Respondent’s Motion to Dismiss finding that the complaint failed to allege Complainant engaged in any activity protected by the SPA. On December 28, 2016, I received two documents from Complainant’s attorney; one is titled “Petition for Review” and is dated December 19, 2016 while the other is titled “Amended Petition for Review” and is dated December 22, 2016. I treated both filings as a motion for

reconsideration pursuant to 29 C.F.R. § 18.93. On January 13, 2017, I denied Complainant's Motion for Reconsideration. Complainant appealed this decision to the Administrative Review Board ("ARB") and the ARB issued a Decision and Order of Remand on July 9, 2018.

This case was docketed in OALJ on August 3, 2018. On August 21, 2018, I issued a Notice of Hearing and Prehearing Order setting this case for hearing in or near Nashville, Tennessee, on November 15, 2018. On October 24, 2018, Respondent submitted a letter advising that the parties had reached a settlement. I issued an order canceling the hearing on October 29, 2018.

I received the parties' *Settlement Agreement & General Release and Waiver of All Claims* ("Settlement Agreement") for review and approval on November 8, 2018. In order to approve a settlement, I must find that the settlement terms constitute a fair, adequate, and reasonable settlement of the complaint. *See* 29 C.F.R. § 1986.111(d)(2). Upon reviewing the Settlement Agreement, I note that the general release encompasses claims for relief that extend beyond the SPA. My authority over settlement agreements is limited to authority conferred by statutes that fall within the Department of Labor's jurisdiction. As such, this review and approval only applies to claims falling within the purview of the SPA. Upon consideration of the Settlement Agreement, I find that it is a fair, reasonable and adequate settlement of the allegations contained in the complaint and the settlement is **APPROVED**.

I also acknowledge that the settlement agreement contains reciprocal confidentiality provisions that address confidential commercial or financial information. As such, these provisions will be treated as confidential information to the extent as provided by 29 CFR Part 70.26.

Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties' submissions in this 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. FOIA requires agencies to disclose requested records unless such records are exempt from disclosure under FOIA. *See, e.g., Fish v. H and R Transfer*, ARB No. 01-071, ALJ Case No. 2000-STA-56, slip op. at 2 (ARB Apr. 30, 2003). Paragraph 6 of the Settlement Agreement provides that the parties will keep the existence and terms of the Settlement Agreement confidential, with certain specified exceptions, and in the cover letter forwarding the agreement to OALJ they request that I treat the Settlement Agreement as confidential and place it under seal.

I **ORDER** section 1(a)(i) of the Settlement Agreement, which contains confidential financial information, to be sealed. I do not find that the parties have set forth sufficient reasons to seal the remaining portions of the agreement when weighed by the presumption of public access. *See* 29 C.F.R. § 18.85(b).

This Office will place the Settlement Agreement in a sealed envelope marked "Confidential Commercial and Personal Financial Information" and place it in the case file. A copy of the Settlement Agreement with paragraph 1(a)(i) redacted will be placed in the public file. In the event that a request is made for access to the unredacted copy of the Settlement Agreement, the Department of Labor will provide the parties with pre-disclosure notification and

an opportunity to respond before any disclosure is made. *See* 29 C.F.R. § 70.26. However, the parties are reminded that the pre-disclosure notice procedure does not, in any way, constitute a finding that the Settlement Agreement, or any portion thereof, will be exempt from disclosure under FOIA. Similarly, this procedure does not suggest that the appropriate disclosure officer would ultimately decline disclosure of the settlement agreement to the FOIA requester, if such a FOIA request was received. *See* 29 C.F.R. § 70.26(f).

After careful consideration of the Settlement Agreement, I find that the terms and conditions are acceptable. Moreover, I find the terms to be fair, adequate, and reasonable under the SPA. Furthermore, I believe it is in the public interest to approve this Settlement Agreement as a basis for administrative disposition of this case, and I therefore approve the Settlement Agreement.

IT IS THEREFORE ORDERED that the Settlement Agreement submitted by the parties is **APPROVED**. The complaint is **DISMISSED WITH PREJUDICE**. In accordance with the regulations, the settlement constitutes the final order of the Secretary of Labor and may be enforced under 29 C.F.R. § 1986.113.

Accordingly, it is **ORDERED** that:

- (1) The parties' settlement is **APPROVED**;
- (2) The complete Settlement Agreement shall remain under seal and a redacted copy, as explained above, will be included in the publicly available record;
- (3) The complaint of Jason Meeks in the above-captioned case is **DISMISSED WITH PREJUDICE**; and
- (4) This order shall constitute the final order of the Secretary. 29 C.F.R. § 1986.111(e).

SO ORDERED.

MORRIS D. DAVIS
Administrative Law Judge