



Issue Date: 03 June 2020

OALJ Case No.: 2019-SWD-00001
OSHA Case No.: 6-0330-18-097

In the Matter of:

MAVERICK HENDRIX,
Complainant,

v.

ACCENT MARBLE & GRANITE,
Respondent,

and

**ADMINISTRATOR, OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION,**
Party-in-Interest.

DECISION AND ORDER APPROVING SETTLEMENT AND DISMISSING CLAIM

1. Nature of Request. The case arises pursuant to a complaint alleging violations under the employee protective provisions of the Solid Waste Disposal Act (“SWDA” or “the Act”) 42 U.S.C. § 6971, and the regulations thereunder at 29 C.F.R. Part 24. The Act includes a whistleblower protection provision with a Department of Labor complaint procedure. Pursuant to 29 C.F.R. § 24.111, the parties submitted a proposed settlement agreement for the undersigned’s approval.

2. Case Procedural History and Settlement Agreement Review.

a. Complainant filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging Respondent committed prohibited retaliation under the SWD. Respondent filed an answer to the complaint in which it denied liability. The undersigned issued a Notice of Case Assignment and Prehearing Order on August 20, 2019.

b. On June 1, 2020, the parties filed a motion requesting the undersigned approve a Settlement Agreement prepared by counsel for the parties. The Settlement Agreement resolves this matter without the need for a formal hearing, and it was signed by each of the parties.

c. Settlements of cases governed by 29 C.F.R. Part 24 must be reviewed and found to be fair, adequate and reasonable and not against the public interest before the complaint will be dismissed. Although it is not necessary that the settlement agreement be part of the final order, "when a settlement is not fair and equitable to a complainant, [the Secretary] cannot approve it for to do so would be an abdication of the responsibility imposed on [the Secretary] by Congress to effectuate the purpose of [the Act]" *Macktal v. Brown & Root, Inc.*, 86-ERA-23 (Sec'y May 11, 1987) (order to submit settlement agreement). *Heffley v. NGK Metals Corp.*, 89-SDW-2 (Sec'y Mar. 6, 1990) (order to submit settlement). However, the SWDA does not require the Secretary to approve a settlement. *Jones v. EG&G Defense Materials, Inc.*, ARB No. 01-039, ALJ No. 1995-CAA-3 (ARB Mar. 13, 2001).

d. The undersigned reviewed the factual stipulations, legal issues and obligations imposed upon each party as specifically addressed in the Settlement Agreement. The undersigned concludes the terms and requirements of the Settlement Agreement are fair, adequate, reasonable, and not contrary to public policy.

3. Ruling and Order.

a. The Settlement Agreement is APPROVED and may be enforced pursuant to 29 C.F.R. § 24.111(e). The parties shall implement the terms as stated in the Settlement Agreement to the extent not otherwise already accomplished. This Order has the same force and effect as one made after a full hearing on the merits.

b. Notwithstanding the parties' agreement, the parties' submissions, including the Settlement Agreement, become part of the record of the case and are subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a). If a FOIA request is made for the Settlement Agreement, the U.S. Department of Labor will respond and decide whether to exercise its discretion to claim any applicable exemption. The parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

c. A formal hearing in this case is not necessary.

d. This case is DISMISSED with prejudice.

SO ORDERED this day at Covington, Louisiana.

TRACY A. DALY
ADMINISTRATIVE LAW JUDGE

