



Issue Date: 30 July 2018

Case No.: 2018-TSC-00002
OSHA No.: 5-3100-17-051

In the Matter of:

DEAN KUSEY,
Complainant,

v.

FROEDTERT HEALTH, INC.,
Respondent.

DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT

This proceeding arises under the employee protection provisions of the Toxic Substances Control Act (“TSCA” or “Act”), 15 U.S.C. § 2622, as amended, and the procedural regulations found at 29 C.F.R. Part 24.

On March 8, 2018, I issued a *Notice of Assignment* and *Notice of Hearing* setting a hearing date of August 7, 2018. On July 12, 2018, Claimant’s counsel advised a member of my staff that the parties had reached a settlement agreement resolving the issues that were to be presented at trial. Accordingly, on July 16, 2018, I issued an order cancelling the scheduled hearing and giving the parties sixty days to submit settlement documentation for my review.¹

On July 23, 2018, Complainant submitted an *Unopposed Motion for Approval of Settlement Agreement* requesting dismissal with prejudice and an executed *Settlement Agreement* (“Settlement”) for my review.² The Settlement resolves the controversy arising from Complainant’s TSCA complaint. It is signed by Complainant and the Vice President of Human

¹ 29 C.F.R. § 24.111 provides that a case may be settled after objections to the Secretary’s Findings are issued “if the participating parties agree to a settlement and the settlement is approved by the ALJ”

² The parties have agreed that the terms of the settlement will be treated as confidential. The parties are afforded the right to request that information be treated as confidential commercial information where, as here, they are required to submit information involuntarily. 29 C.F.R. § 70.26(b) (2001). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predisclosure notification if a FOIA request is received seeking release of that information. Accordingly, the Settlement in this matter will be placed in an envelope marked “PREDISCLURE NOTIFICATION MATERIALS.” Consequently, before any information in this file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. *See* 29 C.F.R. § 70.26 (2001). Furthermore, the undersigned will refrain from discussing specific terms or dollar amounts contained in the Settlement.

Resources Operations for Community Memorial Hospital of Menomonee Falls, Inc.³ The Settlement provides that Complainant will release Respondent from claims arising under the TSCA as well as various other laws. This order, however, is limited to whether the terms of the Settlement are a fair, adequate, and reasonable settlement of Complainant's allegations that Respondent violated the TSCA.⁴ The Settlement provides that Respondent shall make a payment to Complainant of the amount agreed upon and that the Complainant will effectuate the dismissal of this matter.

Having been advised of the settlement terms and having reviewed the Settlement, noting that the parties are represented by counsel, I find the terms of the Settlement to be fair, adequate, reasonable, and not contrary to public policy, and are therefore approved. Upon my approval, the parties shall implement the terms of the Settlement as stated in the Settlement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits. Again, it is noted that my authority only extends to approving settlement of Complainant's claim against Respondent under the TSCA.

Accordingly, **IT IS HEREBY ORDERED** that Complainant's *Unopposed Motion for Approval of Settlement Agreement* is GRANTED. I **APPROVE** the *Settlement Agreement* filed on July 23, 2018 and the withdrawal of Complainant's objections to the Secretary's Findings based on the Agreement. In accordance with 29 C.F.R. § 24.111(e), the *Settlement Agreement* shall constitute the final order of the Secretary and may be enforced pursuant to 29 C.F.R. §24.113.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

³ It appears that Froedtert Health is the hospital organization that oversees Community Memorial Hospital of Menomonee Falls, Inc., and that the names have been used interchangeably in filings.

⁴ As stated in *Poulos v. Ambassador Fuel Oil Co. Inc.*, Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987), "the Secretary's authority over the settlement agreement is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute." I have therefore limited my review of the Settlement to determining whether the terms thereof are a fair, adequate and reasonable settlement of the Complainant's allegation that the Respondent had violated the TSCA.