U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

IN THE MATTER OF:

PRIMO C. NOVERO,

COMPLAINANT,

v.

DUKE ENERGY FLORIDA, INC.;
URS ENERGY & CONSTRUCTION, INC.;
and CDI CORP.;

RESPONDENTS.

ARB CASE NO. 15-072

ALJ CASE NO. 2013-ERA-018

DATE: FEB 11 2016

2016 FEB 22 AM 11: 32
US DEPT OF LABOR
ADMIN LAW JUDGES
WASHINGTON DC

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:
Primo C. Novero, *pro se*, Russellville, Arkansas

For the Respondent:
Lewis M. Csedrik, Esq.; *Morgan, Lewis & Bockius, LLP*; Washington, District of Columbia

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge* and Joanne Royce, *Administrative Appeals Judge*

ORDER DENYING RECONSIDERATION

On November 18, 2015, the Administrative Review Board issued an Order Dismissing Complaint in this case arising under the employee protection provisions of the Energy Reorganization Act (ERA), as amended, and implementing regulations.[1] The Board dismissed the case because Respondents notified the Board that "Mr. Novero now has elected to forego his appeal before the Board by filing his ERA claim before the U.S.

[1] 42 U.S.C.A. § 5851 (Thomson Reuters 2012) (ERA); 29 C.F.R. Part 24 (2015).

District Court for the Eastern District of Arkansas."[2] Respondents attached a copy of Novero's Complaint in Civil Action No. 4:15cv594-KGB to its Motion to Dismiss.

If the Board has not issued a final decision within 180 days of the date on which the complainant filed a SOX complaint[3] with the Department of Labor, and there is no showing that the complainant has acted in bad faith to delay the proceedings, the complainant may bring an action at law or equity for de novo review in the appropriate United States district court, which will have jurisdiction over the action without regard to the amount in controversy.[4] Accordingly, we dismissed his SOX complaint filed with the Department of Labor.

On January 19, 2016, the Board received Complainant's Assertion of his Rights and Objections to Respondents' Joint Motion to Dismiss Complaint (Dated 11/10/15) (Complainant's Filing). For purposes of resolving this filing, we will consider it to be a timely motion for reconsideration of the Board's Order of Dismissal.

When determining whether to grant reconsideration of a Board order, we generally apply the following criteria to determine whether the party requesting reconsideration has shown:

> (i) material differences in fact or law from that presented to the Board of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the Board's decision, (iii) a change in the law after the Board's decision, and (iv) failure to consider material facts presented to the Board before its decision.[5]

On review of Novero's filing, we fail to find that he has shown that the panel decision warrants reconsideration.

Specifically, Novero admits that he has filed an ERA whistleblower complaint in district court and that the facts and events that are the subject of that claim are the same as those of the complaint he filed with the Department of Labor.[6] He asks the Board not

---

2 Mot. Dis. at 2.

3 Novero filed his complaint with the Occupational Safety and Health Administration on January 31, 2013.

4 18 U.S.C.A. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114.

5 *Friedman v. Columbia Univ.*, ARB No. 12-089, ALJ No. 2012-ERA-008, slip op. at 2 (ARB Jan. 22, 2014) (Order Denying Reconsideration).

6 Complainant's Filing at 4-5.

to dismiss his case "based on literal code interpretation and practices."[7] Novero has failed to cite to any authority that would permit the Board to retain jurisdiction of his ERA complaint. Accordingly, we **DENY** reconsideration of our Order Dismissing Complaint in this case.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

---

[7] *Id.* at 5.