



In the Matter of:

LAURENT J. BROWN,

ARB CASE NO. 2019-0060

COMPLAINANT,

ALJ CASE NO. 2019-ERA-00003

v.

DATE: February 19, 2020

BWSR, LLC,

RESPONDENT.

Appearances:

For the Complainant:

Laurent J. Brown; *pro se*; Richmond, Kentucky

For the Respondent:

Timothy M. Lawlor, Esq., Matthew A. Mensik, Esq., and Sawyer R. Margett, Esq.; *Witherspoon Kelley*; Spokane, Washington

Before: Thomas H. Burrell, *Acting Chief Administrative Appeals Judge*,
James A. Haynes and Heather C. Leslie, *Administrative Appeals Judges*.

FINAL DECISION AND ORDER

This case arises under the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (2005), and as implemented by regulations codified at 29 C.F.R. Part 24 (2019). The Complainant, Laurent J. Brown, filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that his employer, BWSR, LLC, the Respondent, terminated his employment after he engaged in protected activity, in violation of the ERA's whistleblower provisions. OSHA found that there was no reasonable cause to believe that BWSR violated the ERA's whistleblower provisions because Complainant did not make a prima facie showing that his work refusal was protected activity under the ERA. Complainant

requested a hearing before an Administrative Law Judge (ALJ), who granted Respondent's motion for summary decision because Respondent is not an "employer" under 42 U.S.C. 5851(a)(2).¹ We affirm, adopting and attaching the ALJ's order.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Administrative Review Board (ARB) authority to review ALJ decisions in cases arising under the ERA and issue final agency decisions in these matters.² The ARB reviews an ALJ's grant of summary decision de novo, applying the same standard that ALJs employ.³ Pursuant to 29 C.F.R. § 18.72 (2019), summary decision must be entered if the pleadings, affidavits, material obtained by discovery, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

DISCUSSION

Upon review of the ALJ's grant of summary decision, we conclude that it is a reasoned ruling based on the undisputed facts and the applicable law. The ALJ properly concluded that Respondent falls under the exclusion in the statute at §5851(a)(2)(D) such that it is not an employer under the ERA because it is a subcontractor covered by Executive Order 12344. Thus, the ALJ properly concluded that Respondent has established that there is no issue as to a genuine issue of material fact and is entitled to summary decision as a matter of law.

Accordingly, we adopt and attach the ALJ's Order Granting Respondent's Motion for Summary Decision.

SO ORDERED.

¹ Order Granting Respondent's Motion for Summary Decision at 3-4 (ALJ May 13, 2019).

² Secretary's Order No. 1-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13072 (Apr. 3, 2019).

³ *Siemaszko v. FirstEnergy Nuclear Operating Co., Inc.*, ARB No. 09-123, ALJ No. 2003-ERA-013, slip op. at 3 (ARB Feb. 29, 2012).