U.S. Department of Labor

Office of Administrative Law Judges
36 E. 7th St., Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)

Issue Date: 26 July 2011

CASE NO: 2011-SDW-00002

In the Matter of

SHANNON HOSKINS
Complainant,

v.

CITY OF MILTON, KENTUCKY,

and

DANNY JACKSON, Individually,
Respondents.

Appearances:

Michael Augustus, P.S.C.
For the Complainant

Charles Cole, Esq.
For the Respondents

Before: John P. Sellers, III
Administrative Law Judge

DECISION AND ORDER APPROVING SETTLEMENT AND DISMISSING THE CASE WITH PREJUDICE

This matter arises under the employee protection provisions of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300j-9 and the Secretary of Labor's implementing regulations found at 29 C.F.R. Part 24. Pursuant to a Notice of Hearing and Prehearing Order, this matter was set for hearing on April 25, 2011. On April 13, 2011, this Office received notice via facsimile transmission from the Complainant's counsel that the parties had resolved the matter by settlement and requested cancellation of the hearing. Pursuant to Order dated April 19, 2011, the hearing was canceled and the parties were ordered to submit their settlement agreement for my approval.

The parties submitted a settlement agreement on June 6, 2011. In light of several deficiencies, I conducted an on-the-record teleconference on June 29, 2011, in which these

matters were fully discussed. I also provided written Notice of Deficiency. I received a revised settlement agreement on July 22, 2011.

The applicable regulations specifically provide that "[a]t any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement" and such settlement is approved by the ALJ or the Board. 29 C.F.R. § 24.111(d)(2). A settlement under the SDWA cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. *Collins v. Village of Lynchburg, Ohio*, ARB No. 10-097, ALJ No. 2006-SDW-003, slip op. at 2-3 (ARB June 19, 2010) (*citing Bhat v. District of Columbia Water & Sewer Auth.*, ARB No. 06-014, ALJ No. 2003-CAA-017, slip op. at 2-3 (ARB May 30, 2006)).

I have carefully reviewed the parties' revised settlement document. Based on the substance of the revised settlement agreement and Hoskins's testimony during the teleconference, which was under oath, I find that the settlement is fair, adequate, reasonable, and is in the public interest. Furthermore, I am convinced, based upon Hoskins's sworn testimony during the teleconference, that the Complainant has knowingly, voluntarily, and intelligently agreed to a settlement of this matter. I note in this regard that both parties are represented by counsel, who have represented that in light of the inherent risks of litigation the settlement is fair, adequate, and reasonable.

I emphasize that "[t]he parties' submissions, including the agreement become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C.A. § 552 (West 1996). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act." *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip op. at 2 (ARB June 24, 1996). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. *See* 29 C.F.R. Part 70.[1]

I also noted that the confidentiality agreement expressly states that Ms. Hoskins is not precluded from voluntarily communicating with federal, state, or local governmental authorities concerning her employment with the Respondent or the terms of the settlement agreement. The confidentiality agreement therefore does not violate public policy.

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the SDWA. My authority over settlement agreements is limited to the statutes that are within jurisdiction of this Office as defined by the applicable statute.

[1] "Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h)." *Coffman*, slip op. at 2, n.2.

Thus, I approve the agreement only insofar as it pertains to Hoskins's SDWA claim in the above-captioned case.

Accordingly, it is hereby **ORDERED** that the settlement agreement is **APPROVED** and the complaint which gave rise to this litigation is **DISMISSED** with prejudice. This constitutes the Secretary of Labor's final order. 29 C.F.R. § 24.111(e).

A

JOHN P. SELLERS, III
Administrative Law Judge