



**Issue Date: 06 January 2012**

**CASE NO.: 2007-SOX-00043**

*In the Matter of:*

**HEIDI FUNKE,**  
Complainant,

v.

**FEDERAL EXPRESS CORPORATION**  
**dba FEDEX EXPRESS,**  
Respondent.

### **ORDER APPROVING SETTLEMENT AGREEMENT**

This case arises out of a complaint of retaliation filed pursuant to the employee protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act ("SOX" or "the Act"), 18 U.S.C. § 1514A, enacted on July 30, 2002. On January 5, 2012, the parties submitted a letter requesting the approval of a settlement agreement which contains a confidentiality provision together with a document entitled "Settlement Agreement and General Release of All Claims" which resolve all issues raised in the Complaint, for review and approval by the undersigned administrative law judge. The aforesaid Motion and Settlement Agreement are incorporated herein by reference.

My review of the settlement agreement is limited to a determination of whether its terms are fair, adequate and reasonable. The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to the public interest.

Initially, I note that the parties are represented by counsel.

Section 6 of the settlement agreement provides that both parties will keep the existence and terms of the settlement agreement confidential, with certain specified exceptions. Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties' submissions in the case, including the settlement agreement, become a part of the record in this case and are subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552 (1988). FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. *Gerald Fish v. H and R Transfer*, ARB No. 01-071; ALJ Case No. 00-STA-56 (ARB April 30, 2003).

The parties in this matter have indicated that the settlement agreement comprises and includes confidential information which may be exempt from disclosure under FOIA. The

Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of requests and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. §70.26. The settlement agreement in this case will be placed in a separate envelope and identified as being confidential commercial information pursuant to the parties' request.

After careful consideration of the settlement agreement, I find that none of the terms or conditions is unacceptable. Moreover, I find the terms of the agreement to be fair and reasonable and adequately protect Ms. Funke. Furthermore, I believe it is in the public interest to approve the agreement as a basis for administrative disposition of this case and I therefore approve the settlement agreement.

Accordingly, this case is **DISMISSED** with prejudice.

A

Russell D. Pulver  
Administrative Law Judge

*San Francisco, California*