



Issue Date: 08 February 2019

OALJ Case No.: 2018-STA-00036
OSHA Case No: 4-2950-17-139

In the Matter of:

CLARISSA SHAFFER,
Complainant,

v.

REDSTAR ENTERPRISES, LLC,
Respondent.

**DECISION AND ORDER GRANTING WITHDRAWAL OF COUNSEL,
APPROVING SETTLEMENT AGREEMENT, AND
DISMISSING COMPLAINT WITH PREJUDICE**

This matter arises under the Surface Transportation Assistance Act (the “Act” or “STAA”), 49 U.S.C. § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-053, and the applicable regulations issued thereunder at 29 C.F.R. Part 1978. Complainant is proceeding *pro se*.

Though this matter was originally set for hearing, the parties requested that the hearing be cancelled so that they could pursue mediation. I granted that request on November 26, 2018. *See* Order Cancelling and Continuing Hearing. The parties engaged in mediation.

On December 17, 2018, Complainant’s counsel filed a Motion to Withdraw (“Withdrawal Motion”). Based on the circumstances of this case, I find that withdrawal is warranted.

On January 28, 2019, the Respondent and Complainant withdrew from mediation, having reached settlement. On February 1, 2019, I received the parties’ Joint Motion for Approval of Settlement (“Motion”). Attached to the Motion was the parties’ Confidential Settlement Agreement and General Release (“Settlement Agreement”). The Settlement Agreement was signed by the parties in this matter.

The STAA and implementing regulations provide that proceedings may be terminated on the basis of a settlement if either the Secretary or the Administrative Law Judge (“ALJ”)

approves the settlement. 49 U.S.C. § 31105(b)(2)(C); 29 C.F.R. § 1978.111(d)(2). Under the STAA, a settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable and in the public interest. *Edmisten v. Ray Thomas Petroleum*, No. 10-020 (ARB Dec. 16, 2009). To accomplish such review, the regulations direct the parties to file a copy of the settlement with the body before whom the case is being litigated. *See* 29 C.F.R. § 1978.111(d)(2). If the settlement is then approved, it constitutes the final order of the Secretary and may be enforced pursuant to § 1978.113. 29 C.F.R. § 1978.111(e).

Having reviewed the Settlement Agreement and its provisions, which includes dismissal of the complaint, I find the terms, obligations and conditions fair, adequate, and reasonable, and in the public interest.¹ I also find that the settlement agreement was not procured through duress. Accordingly, I approve the parties' settlement agreement and dismiss the complaint with prejudice.² The parties shall implement the terms of the approved settlement as specifically stated in the agreement.³

ORDER

Complainant's counsel's Withdrawal Motion is **GRANTED**. The Motion and Settlement Agreement is **APPROVED**. This matter is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

PAUL R. ALMANZA

Associate Chief Administrative Law Judge

¹ Complainant "represents and warrants that she is owed nothing for attorney's fees and costs and that no attorney's fees, costs, or other lien exist from her prior counsel." Settlement Agreement at 2. My law clerk confirmed with Complainant's former counsel that no such liens, fees, or costs existed.

² The parties do not specifically state that the complaint will be dismissed with prejudice; they instead include a "General Release of Claims." Settlement Agreement at 3-4. In that section, the parties identify numerous types of claims that Complainant "knowingly and voluntarily" agrees to "forever discharge[]" against Respondents. *Id.* At 3. My approval of this settlement agreement extends solely to the STAA complaint over which the Office of Administrative Law Judges has jurisdiction. However, I acknowledge that the language of the General Release of Claims section plainly establishes that the parties seek dismissal of the 2018-STA-00036 complaint with prejudice.

³ The parties have agreed that the terms of the settlement will be treated as confidential. They have not, however, asked that I seal the Settlement Agreement. The confidentiality of information submitted to the Department of Labor is limited under the Freedom of Information Act ("FOIA"). Parties may request that information be treated as confidential commercial information under FOIA where, as here, they are required to submit information involuntarily. 20 C.F.R. § 70.26(b). The Department of Labor is then required to take steps to preserve the confidentiality of that information, and it must provide the parties with prediscovery notification if a FOIA request is received seeking release of that information. Given the parties' request for confidentiality, I shall mark the parties' Motion and Settlement Agreement as "FOIA Prediscovery Notification Materials – see 29 C.F.R. § 70.26" in the case file. *See* 29 C.F.R. § 70.26. Moreover, I shall refrain from discussing specific terms or dollar amounts contained in the Motion and Settlement Agreement.