In the Matter of:

DIANA R. WILLIAMS, **ARB CASE NO. 01-021**

COMPLAINANT, **ALJ CASE NO. 00-CAA-15**

v. **DATE: May 30, 2003**

BALTIMORE CITY PUBLIC SCHOOLS SYSTEM,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:
Diana R. Williams, pro se, *Baltimore, Maryland*

For the Respondent:
Brian K. Williams, Esq., *Office of Legal Council, Baltimore, Maryland*

FINAL DECISION AND ORDER

On or about December 14, 1999, Diana R. Williams, a mathematics teacher, filed a complaint with the United States Department of Labor alleging that her former employer, the Baltimore City Public Schools System (BCPSS), had suspended her without pay and then dismissed her because she reported numerous environmental safety and health complaints to both BCPSS and to government agencies. In these safety and health reports, Williams claimed that BCPPS employees and students were exposed to lead-based paint and asbestos at three schools, and that the drinking water at a fourth school contained lead. Williams alleged that her suspension and dismissal violated the employment protection provisions of the Safe Drinking Water Act, 42 U.S.C.A. § 3000j-9 (West 1991), the Toxic Substances Control Act, 15 U.S.C.A. § 2622 (West 1998), the Clean Air Act, 42 U.S.C.A. § 7622 (West 1995), and the Solid Waste Disposal Act, 42 U.S.C.A. § 6971 (West 1995) (hereinafter, collectively, the "Acts").[1] The

[1] Inexplicably, both the Department of Labor's Regional Supervisory Investigator and the ALJ

Department of Labor Administrative Law Judge (ALJ) who heard the case dismissed Williams's complaint.[2] Williams appeals. The Administrative Review Board has jurisdiction to decide this appeal.[3]

The ALJ found that Williams had engaged in many activities that the Acts protect.[4] However, the ALJ found that BCPPS suspended Williams because in February 1999 she mailed a letter to students' parents erroneously stating that water in one of the schools contained lead. And the ALJ found Williams was dismissed because, in addition to the February 1999 letter, Williams had circulated similar letters in 1996 and 1997 to staff, students, and parents containing unfounded and sensationalized allegations about lead and asbestos hazards at three other schools.[5] The ALJ held that mailing these letters was not protected activity and therefore concluded that BCPPS did not discriminate when it suspended and dismissed Williams for circulating the letters. Furthermore, the ALJ noted, BCPPS's proffered reasons for suspending and dismissing Williams – her unauthorized use of the names and addresses of persons to whom she sent the letters and the disruption in the school system caused by circulating the unfounded allegations – were legitimate and nondiscriminatory. According to the ALJ, Williams did not establish that these reasons were a pretext for discrimination.[6]

We have carefully reviewed the extensive record and find that it fully supports the ALJ's findings of fact. Furthermore, her well-written, well-reasoned recommended decision, attached and incorporated herein, correctly applies established legal precedent in concluding that BCPPS

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indicate that Williams's complaint also alleges violations of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A. § 9610 (West 1995) and the Federal Water Pollution Control Act, 33 U.S.C.A. § 1367 (West 2001).

[2] Williams appears pro se. Her briefs to the Board barely address the ALJ's conclusions of law. Instead, she essentially quarrels with the ALJ's fact findings, arguing that "all of her whistleblowing were substantiated by voluminous evidence, were valid, and had substance due to the fact that all of the lead-based paint hazards and/or lead contaminated drinking water hazards at these schools had not been addressed or resolved . . . ." Complainant's Brief at 5. However, we have construed her briefs liberally, that is, we read them as asserting that the ALJ's conclusions of law were erroneous. *See Young v. Schlumberger Oil Field Services*, ARB No. 00-075, ALJ No. 2000-STA-28, slip op. at 8 (ARB Feb. 28, 2003).

[3] *See* 29 C.F.R. § 24.8(a) (2002) and Secretary's Order No. 1-2002, 67 Fed. Reg. 64272 (Oct. 17, 2002). The Board is not bound by either the ALJ's findings of fact or conclusions of law but reviews both de novo. *See* 5 U.S.C.A. § 557(b) (West 1996); *Masek v. Cadle Co.*, ARB No. 97-069, ALJ No. 95-WPC-1, slip op. at 7 (ARB Apr. 28, 2000) and authorities there cited.

[4] ALJ's Recommended Decision and Order (R. D. & O.) at 33-39.

[5] *See* Complainant's Exhibits 250, 270.

[6] R. D. & O. at 40-44.

did not discriminate.[7] Therefore, we **AFFIRM** her Recommended Decision and Order and **DENY** the complaint.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

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[7] However, the ALJ erred when she examined whether Williams had established a prima facie case. *See* R. D. & O. at 34 ("The Claimant in a whistleblower case initially has the burden of proving a prima facie case by a preponderance of the evidence."). To establish a prima facie case, a complainant needs only to present evidence sufficient to raise an inference, a rebuttable presumption, of discrimination. As the Secretary and the Board have noted, a preponderance of the evidence is not required. Furthermore, when the respondent

> produces evidence that the complainant was subjected to adverse action for a legitimate, nondiscriminatory reason, the rebuttable presumption created by complainant's *prima facie* showing "drops from the case." *Texas Department of Community Affairs v. Burdine,* 450 U.S. at 255, n.10. Once the respondent has presented his rebuttal evidence, the answer to the question whether the plaintiff presented a *prima facie* case is no longer particularly useful. 'The [trier of fact] has before it all the evidence it needs to determine whether 'the defendant intentionally discriminated against the plaintiff." *USPS Bd. of Governors v. Aikens,* 460 U.S. at 715 (quoting *Texas Department of Community Affairs v. Burdine,* 450 U.S. at 253).

Carroll v. Bechtel Power Corp., 1991-ERA-0046, slip op. at 11 (Sec'y Feb. 15, 1995) (Secretary's order enforced *sub nom Carroll v. United States Dep't of Labor,* 78 F.3d 352 (8th Cir. 1996)). Thus, after a whistleblower case has been fully tried on the merits, the ALJ does not determine whether a prima facie showing has been established, but rather whether the complainant has proved by a preponderance of the evidence that the respondent discriminated because of protected activity.