



In the Matter of:

THOMAS SAPORITO,

ARB CASE NO. 05-009

COMPLAINANT,

**ALJ CASE NOS. 03-CAA-1
03-CAA-2**

v.

DATE: May 24, 2005

**GE MEDICAL SYSTEMS and ADECCO
TECHNICAL SERVICES,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Thomas Saporito, pro se, North Palm Beach, Florida

For Respondent GE Medical Systems:

David T. Baron, Esq., Quarles & Brady, Phoenix, Arizona

For Respondent Adecco Technical Services:

Dudley C. Rochelle, Esq., Littler Mendelson, P.C., Atlanta, Georgia

**FINAL DECISION AND ORDER APPROVING SETTLEMENT AND
DISMISSING COMPLAINT**

This case arises under the employee protection provisions of several environmental protection statutes¹ and the Energy Reorganization Act (ERA).² The

¹ These statutes include: the Clean Air Act, 42 U.S.C.A. § 7622 (West 1995); the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. § 9610 (West 1995); the Federal Water Pollution Control Act, 33 U.S.C.A. § 1367 (West 2001), the Safe Drinking Water Act, 42 U.S.C.A. § 300(j)-9(i) (West 1991); the Solid Waste Disposal Act, 42 U.S.C.A. § 6971 (West 2003); and the Toxic Substances Control Act, 15 U.S.C.A. § 2622 (West 1998).

Complainant, Thomas Saporito, filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that the Respondents, GE Medical Systems (GEMS) and Adecco Technical, refused to hire him and blacklisted him in violation of the environmental statutes's and the ERA's whistleblower protection provisions.

After investigating the allegations in the complaint, OSHA found no merit to them. Saporito filed a hearing request with the Department of Labor's Office of Administrative Law Judges.³ On October 15, 2004, an Administrative Law Judge (ALJ) issued a Recommended Decision and Order Dismissing Complaint (R. D. & O.). The ALJ found that Saporito

has failed to prove by a preponderance of the evidence that Respondents, GEMS and Adecco, violated the whistleblower protection provisions of the CAA, TSCA, CERCLA, SDWA, AWDA, and ERA by retaliating against him for his protected activities. As discussed in detail above, the Respondents had valid non-discriminatory reasons for terminating the Complainant's employment. There was no evidence that either Respondent blacklisted the Complainant, and the Complainant failed to prove that the Respondents' failure to rehire him was the result of prohibited discrimination.

Saporito filed a petition for review of the order with the Administrative Review Board.⁴ The Secretary of Labor has delegated to the Board the authority to review an ALJ's recommended decision in cases arising under the environmental whistleblower statutes and the ERA.⁵ The Board issued a Notice of Appeal and Order Establishing Briefing Schedule. On May 17, 2005, the parties submitted a Joint Motion for Approval of Settlement Agreement and for Order of Dismissal with Prejudice as to all Claims Alleged Against Respondents. We now review the settlement.

We find the overall settlement terms to be reasonable but our review of the agreement reveals that it appears to contain two irreconcilable provisions. The

² 42 U.S.C.A. § 5851 (West 1995).

³ See 29 C.F.R. § 24.4(d)(2004).

⁴ See 29 C.F.R. § 24.8 (2004).

⁵ Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64272 (Oct. 17, 2002); 29 C.F.R. § 24.8(a)(2004).

Settlement Agreement provides, “Mr. Saporito hereby irrevocably and unconditionally releases GEMS and Adecco from and covenants not to sue on behalf of himself or anyone else or any other entity, GEMS or Adecco with respect to, **any and all claims Mr. Saporito** has, or anyone else or any other entity, has **or may have** against GEMS or Adecco.”⁶ The settlement also provides, “This release applies both to claims that are now known or are later discovered. However, this **release does not apply to any claims that arise after the date Mr. Saporito executes the release** nor any claims that may not be released under applicable law.”⁷ In any event, we construe the waiver provisions as limited to the right to sue in the future on claims or causes of action arising out of facts or any set of facts occurring before the date of the agreement.⁸

Furthermore, the agreement encompasses the settlement of matters under laws other than the environmental whistleblower statutes and the ERA.⁹ The Secretary’s authority over settlement agreements is limited to such statutes as are within the Secretary’s jurisdiction and is defined by the applicable statute.¹⁰ Thus, we approve the instant settlement agreement only insofar as it pertains to matters within the Secretary’s jurisdiction.

We find that the agreement, as construed above, is a fair, adequate and reasonable settlement of the complaint. Accordingly, we **APPROVE** the Settlement Agreement and **DISMISS** the complaint **WITH PREJUDICE**.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

OLIVER M. TRANUE
Administrative Appeals Judge

⁶ Complete and Permanent Release and Settlement Agreement and General Release at ¶ 1 (emphasis added).

⁷ *Id.* at ¶ 2 (emphasis added).

⁸ *Johnson v. Transco Products, Inc.*, ALJ No. 85-ERA-7, slip op. at 2 (Sec’y Aug. 8, 1985). *See also Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 51-52 (1974); *Rogers v. General Elec. Co.*, 781 F.2d 452, 454 (5th Cir. 1986).

⁹ Complete and Permanent Release and Settlement Agreement and General Release at ¶¶ 1, 3, 4, 19.

¹⁰ *Wong v. Coach U.S.A.*, ARB No. 05-010, ALJ No. 03-STA-51, slip op. at 2 (ARB Feb. 28, 2005).