



IN THE MATTER OF:

PONG WU,

ARB CASE NO. 12-114

COMPLAINANT,

ALJ CASE NO. 2012-CAA-004

v.

DATE: October 28, 2013

ASSOCIATION OF CENTRAL
OKLAHOMA GOVERNMENTS,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Raymond C. Durbin, Esq.; Oklahoma City, Oklahoma

For the Respondent:

Elaine R. Turner, Esq. and Elisabeth E. Muckala, Esq.; *Hall, Estill,
Hardwick, Gable, Golden & Nelson, P.C.*, Oklahoma City, Oklahoma

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*, and E. Cooper Brown
Deputy Chief Administrative Appeals Judge

FINAL ORDER APPROVING SETTLEMENT AND RELEASE

This case arises under the whistleblower protection provisions of the Clean Air Act (CAA).¹ The Complainant, Pong Wu, petitioned the Administrative Review Board to review the Recommended Order of Dismissal of a Department of Labor

¹ 42 U.S.C.A. § 7622 (Thomson/West 2003).

Administrative Law Judge.² Both parties submitted briefs in response to the Board's Notice of Appeal and Order Establishing Briefing Schedule.

Subsequently the Board granted the parties' joint requests for stays of judgment so that the parties could attempt to negotiate a settlement of Complainant's CAA complaint. On October 24, 2013, the Board received a Joint Motion from the parties requesting the Board to approve a settlement agreement. The parties included a Release of Claims and Settlement Agreement (Settlement Agreement) for the Board's review and approval.

The CAA's implementing regulations provide that at any time after a party has filed objections to the Assistant Secretary's findings or order, the case may be settled if the participating parties agree to a settlement and, if the Board has accepted the case for review, the Board approves the settlement agreement.³ An approved settlement "will constitute the final order of the Secretary and may be enforced pursuant to § 24.113."⁴

As an initial matter, we note that the Settlement Agreement encompasses the settlement of matters under laws other than the CAA.⁵ The Board's authority over settlement agreements is limited to the statutes that are within the Board's jurisdiction as defined by the applicable delegation of authority. Therefore, we have restricted our review of the Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this CAA case over which we have jurisdiction.⁶

Paragraph 21 of the Settlement Agreement provides that the Agreement shall be construed and interpreted in accordance with the laws of the State of Oklahoma. We interpret this "choice of law" provision as not limiting the authority of the Secretary of Labor and any Federal courts, which shall be governed in all respects by the laws and regulations of the United States.⁷

² *Pong Wu v. Association of Cent. Okla. Gov'ts*, ALJ No. 2012-CAA-004 (Sept. 11, 2012). See Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69378 (Nov. 16, 2012); 29 C.F.R. § 24.110(a).

³ 29 C.F.R. § 24.111(d)(2).

⁴ 29 C.F.R. § 24.111(e).

⁵ Release of Claims and Settlement Agreement at para. 1.

⁶ *Accord Thompson v. Norfolk Southern Railway, Co.*, ARB No. 13-032, ALJ No. 2011-FRS-015, slip op. at 2 (ARB Feb. 28, 2013); *Bhat v. District of Columbia Water & Sewer Auth.*, ARB No. 06-014, ALJ No. 2003-CAA-017, slip op. at 2 (ARB May 30, 2006).

⁷ See *Hildebrand v. H. H. Williams Trucking, LLC*, ARB No. 11-030, ALJ No. 2010-STA-056, slip op. at 3 (ARB Sept. 26, 2011).

The parties have certified that the Settlement Agreement constitutes the entire settlement with respect to Complainant's CAA claim.⁸ Accordingly, finding that the settlement of that claim is fair, adequate, and reasonable, we **APPROVE** the Settlement and Release and **DISMISS** Complainant's appeal.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

⁸ See para. 16.