U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

STEVEN W. JONES, **ARB CASE NO. 97-129**

COMPLAINANT, **ALJ CASE NO. 95-CAA-3**

v. **DATE: November 24, 1998**

EG&G DEFENSE MATERIALS, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:
Richard Condit, Esq., Joanne Royce, Esq.,
Government Accountability Project, Washington, D.C.

For the Respondent:
Lois A. Baar, Esq., Michael Zody, Esq.,
Parsons, Behle & Latimer, Salt Lake City, Utah

ORDER GRANTING RECONSIDERATION

This case arises under the employee protection provisions of the Clean Air Act, 42 U.S.C. §7622, the Toxic Substances Control Act, 15 U.S.C. §2622, and the Solid Waste Disposal Act (also know as the Resource Conservation and Recovery Act), 42 U.S.C. §6971 (1994) (collectively, "the environmental acts"). We issued a Final Decision and Order (final decision) on September 29, 1998, in which we found that Respondent, EG&G Defense Materials, Inc. (EG&G), violated the employee protection provisions of the environmental acts when it counseled and discharged Complainant, Steven W. Jones.

Within a few days of receiving the Final Decision, EG&G filed a Motion to Amend Findings of Fact and for New Hearing On, or Amendment of, Reinstatement Order. EG&G also filed a motion for stay of remedy pending consideration of the motion to amend. We treat the motion to amend as a motion for reconsideration of our final decision.

Complainant has filed an opposition to EG&G's motion for reconsideration, suggesting that the Board lacks authority under the environmental laws to reconsider a decision once it is issued. We disagree, because the Board has inherent authority under the three statutes underlying this proceeding to reconsider its decisions in appropriate circumstances. For a full discussion of the authority of administrative agencies to reconsider their decisions, *see Macktal v. Brown & Root, Inc.*, ARB Case No. 98-112 and 98-112A, Ord. Granting Reconsideration, Nov. 20, 1998 (Board has inherent authority to reconsider decisions under the Energy Reorganization Act).

The three environmental statutes at involved in this case -- the Clean Air Act, 42 U.S.C. §7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*, and the Solid Waste Disposal Act, 42 U.S.C. §6901 *et seq.* -- represent efforts by Congress to protect the health and safety of persons and the environment by regulating the manufacture and distribution of hazardous substances, and the release of hazardous materials into the environment. The statutes mandate a comprehensive regulatory system, requiring generally that persons or entities that manufacture, generate, store or dispose of toxic substances or hazardous materials comply with a variety of regulations. Under each of the three statutes, general enforcement authority is assigned to the Administrator of the Environmental Protection Agency. *Id.*

Each of the three environmental statutes has an employee protection (or "whistleblower") provision, with enforcement authority assigned to the Secretary of Labor ("Secretary"). 42 U.S.C. §7622; 15 U.S.C. §2622; 42 U.S.C. §6971. Although the language of the whistleblower provisions in the three statutes varies in some respects, the general scheme of all three is similar; in fact, the Secretary has promulgated a single set of procedural regulations to govern the handling of employee discrimination complaints under these statutes. *See* 29 C.F.R. Part 24; 63 Fed. Reg. 6614 (1998).

The whistleblower provisions of the environmental laws do not include specific language addressing the Board's authority to reconsider its decisions. Absent congressional intent to the contrary, agencies have inherent authority to reconsider their final adjudicative orders for error within a reasonable time, *Belville Mining Co. v. United States*, 999 F.2d 989 (6th Cir. 1993) (and cases cited therein); *Dun & Bradstreet Corp. Found. v. United States Postal Serv.*, 946 F.2d 189 (2d Cir. 1991) (and cases cited therein); *Henderson v. Veterans Admin.*, 790 F.2d 436, 441 (5th Cir. 1986), "so long as reconsideration would not interfere with, delay, or otherwise adversely affect accomplishment of the Act's safety purposes and goals." *Macktal* at 4, *citing Gonzalez v. Firestone Tire & Rubber Co.*, 610 F. 2d 241, 245 (5th Cir. 1980).

As in *Macktal*, we find that the Board's reconsideration of its decisions under the environmental laws would not interfere with or adversely affect the general enforcement provisions of the environmental acts or the goals of the employee protection provisions themselves. In *Macktal*, we noted that the general enforcement authority under the statute applicable in that case (*i.e.*, the Environmental Reorganization Act) was assigned to the Nuclear Regulatory Commission; that the Commission's enforcement role operated separate and apart from the Secretary of Labor's employee protection function; and that reconsideration of the Board's order in that case would not impact adversely the Commission's administration of the statute. Similarly, we find in this case that the general enforcement authority of the three environmental statutes at issue here is assigned to the Administrator of the Environmental Protection Agency; that the Administrator's enforcement role

operates separate and apart from the Secretary of Labor's employee protection function; and that reconsideration of the Board's order in this case would not impact adversely the Administrator's administration of the environmental statutes. Further, we note that EG&G's motion to reconsider was filed soon after the Board issued its order.

Upon reexamining the case in light of EG&G's motion to amend, we have determined that further consideration is necessary. Accordingly, the motion to amend (reconsider) is **GRANTED**. In addition, the motion for stay of remedy is **GRANTED** pending our reconsideration of the final decision.

SO ORDERED.

PAUL GREENBERG
Chair

CYNTHIA L. ATTWOOD
Acting Member