



**In the Matter of:**

**RODNEY VAL BENSON,**

**ARB CASE NO. 08-037**

**COMPLAINANT,**

**ALJ CASE NO. 2006-ERA-017**

**v.**

**DATE: May 27, 2010**

**NORTH ALABAMA  
RADIOPHARMACY, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD:**

**Appearances:**

***For the Complainant:***

**Rodney Val Benson, *pro se*, Huntsville, Alabama**

***For the Respondent:***

**Michael A. Vercher, Esq., *Christian & Small LLP*, Birmingham, Alabama**

**ORDER DENYING RECONSIDERATION**

Rodney Val Benson filed a complaint alleging that his former employer, North Alabama Radiopharmacy, Inc. (NARP), violated the employee protection provision of the Energy Reorganization Act (ERA)<sup>1</sup> by discharging him from employment. On April 9, 2010, the Board issued a Final Decision and Order (F. D. & O.), in which we concluded that Benson failed to prove that his ERA-protected activity contributed to his

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<sup>1</sup> 42 U.S.C.A. § 5851 (West 2003 & Supp. 2009). Regulations implementing the whistleblower protection section of the ERA are found at 29 C.F.R. Part 24 (2009).

discharge. On April 15, 2010, Benson submitted a Motion for Reconsideration, requesting reconsideration of our ruling, and a Motion to Supplement Administrative Record, requesting that we incorporate additional documents into the case record. NARP filed a reply to these motions on May 6, 2010.

The ARB will reconsider a prior decision under limited circumstances. Those include: (i) material differences in fact or law from that presented to the Board of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the Board's decision, (iii) a change in the law after the Board's decision, and (iv) failure to consider material facts presented to the Board before its decision. *Knox v. U.S. Dep't of Interior*, ARB No. 03-040, ALJ No. 2001-CAA-003, slip op. at 2 (ARB Oct. 24, 2005). We do not grant reconsideration on motions that merely repeat arguments made on appeal. *McCloskey v. Ameriquest Mortgage Co.*, ARB No. 06-033, ALJ No. 2005-SOX-093, slip op. at 3 (ARB Mar. 26, 2008).

In moving for reconsideration, Benson presents no new matters of law or fact, but instead repeats his previous argument that NARP's proffered reason for discharging him from employment was pretextual. We considered, but rejected, that argument in our F. D. & O. He does not present any change in the law governing his complaint that occurred after our decision. And Benson does not indicate that we failed to consider material facts, but instead he contends that the Board erred by not accepting several of his accusations against NARP as matters of fact. We did not accept those accusations because they were not supported by the record. Benson therefore has not demonstrated that any of the provisions of the Board's four-part test apply to his request for reconsideration.

Benson's Motion to Supplement Administrative Record requests that we incorporate five additional documents into the record because those documents "were discovered since the last hearing." Motion to Supplement Administrative Record at 1. When a party claims to have newly discovered evidence, we look for guidance to Federal Rule of Civil Procedure 60(b), which provides for relief "from a final judgment, order, or proceeding" based upon "(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial . . ." Fed. R. Civ. P. 60(b)(2). See *Timmons v. Mattingly Testing Serv.*, No. 1995-ERA-040 (ARB June 21, 1996). To prevail under this standard, a movant must show that: (1) the evidence was discovered after trial; (2) due diligence was exercised to discover the evidence; (3) the evidence is material and not merely cumulative or impeaching; and (4) the evidence is such that a new trial would probably produce a different result." *Mitchell v. Shalala*, 48 F.3d 1039, 141 (D.C. Cir. 1995).

Four of the five documents presented by Benson contain no information about ERA-protected activities or the reason for his discharge. The remaining document, a letter from the Alabama Department of Public Health, discusses safety related complaints Benson presented to the Nuclear Regulatory Commission after his discharge by NARP. Those complaints could not have contributed to his discharge, and therefore the documents describing those complaints could not produce a different result in this case.

In sum, Benson has failed to show that he has satisfied the Board's requirements for granting his Motion for Reconsideration. And he has not demonstrated that he has met the requirements for incorporating additional evidence into the case record. Accordingly, his Motions for Reconsideration and to Supplement Administrative Record are **DENIED**.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**E. COOPER BROWN**  
**Deputy Chief Administrative Appeals Judge**