



In the Matter of:

SYED M.S. HASAN,

COMPLAINANT,

v.

ENERCON SERVICES, INC.,

RESPONDENT.

ARB CASE NO. 12-096

**ALJ CASE NOS. 2004-ERA-022
2004-ERA-027**

DATE: March 14, 2013

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Syed M.S. Hasan; *pro se*; Madison, Alabama

For the Respondent:

Terry M. Kollmorgen, Esq.; *Moyers, Martin, Santee & Imel, LLP*, Tulsa, Oklahoma

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; and Luis A. Corchado, *Administrative Appeals Judge*

FINAL DECISION AND ORDER

Syed M.S. Hasan filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Enercon Services, Inc., violated the employee protection provisions of the Energy Reorganization Act of 1974, as

amended, 42 U.S.C.A. § 5851 (West 2003 & Supp. 2012) (ERA). A Department of Labor (DOL) Administrative Law Judge (ALJ) dismissed Hasan's complaint because after holding a hearing and receiving evidence, he found that Hasan failed to prove by a preponderance of the evidence that any protected activity was a contributing factor in any adverse action Enercon took against him. Hasan has appealed the dismissal of his complaint to the Administrative Review Board (ARB).¹ We summarily affirm on the issue of causation.

DISCUSSION

To prevail on his whistleblower complaint Hasan must prove by a preponderance of the evidence that (1) he engaged in protected activity, (2) which protected activity caused or was a contributing factor in, (3) adverse action that was taken against him. 29 C.F.R. § 24.109(b)(1) (2012). The failure to prove any one of these elements necessarily requires dismissal of a whistleblower complaint. The parties did not dispute that Hasan engaged in protected activity. D. & O. at 16. Therefore, we focus only on the causation element. The ALJ's analysis and the facts of this case readily demonstrate that no alleged protected activity was a contributory factor in the Respondent's employment decisions. Accordingly, we adopt and affirm the ALJ's findings as to causation.

The ALJ found that Hasan failed to establish any nexus between any protected activity and Enercon's failure to hire him. *Id.* at 18. Substantial evidence supports the ALJ's findings on the essential facts and his findings support his ultimate conclusion. The ALJ patiently listened to and observed the demeanor of the witnesses at the hearing and credited Richardson's and McGoey's explanations regarding key events. *Id.* at 16, 17. The witnesses as a whole persuaded the ALJ that the reasons for its hiring decisions were not related to any protected activity but many other reasons related to the previous experience, skill, and expertise of the individuals selected over complainant. *Id.* at 16-18. The ALJ thoroughly explained his factual and legal findings, and we incorporate them into this decision.

¹ 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) (2012).

CONCLUSION

Accordingly, we **AFFIRM** the ALJ's decision and **DISMISS** Hasan's complaints.

SO ORDERED.

LUIS A. CORCHADO
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge