



**In the Matter of:**

**WILLIAM VINNETT,**

**ARB CASE NO. 15-009**

**COMPLAINANT,**

**ALJ CASE NO. 2006-ERA-029**

**v.**

**DATE: AUG 30 2016**

**MITSUBISHI POWER SYSTEMS,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**Michael S. Welsh, Esq.; *Welsh Law, LLC*; Atlanta, Georgia**

*For the Respondent:*

**Laura L. Mall, Esq.; *Ford Harrison, LLP*; West Palm Beach, Florida**

**BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*; E. Cooper Brown, *Administrative Appeals Judge*; and Anuj Desai, *Administrative Appeals Judge***

**FINAL DECISION AND ORDER**

This case arises under the whistleblower protection provisions of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C.A. § 5851 (2006), and its implementing regulations codified at 29 C.F.R. Part 24 (2006). William Vinnett filed a complaint with the Occupational Safety and Health Administration (OSHA) on June 26, 2005, claiming that Mitsubishi Power Systems (Mitsubishi) terminated his employment in violation of the ERA whistleblower provisions. OSHA dismissed his case. Vinnett filed objections and requested a hearing before a Department of Labor Administrative Law Judge (ALJ). Before the presiding ALJ, Mitsubishi filed a motion for summary decision seeking dismissal of Vinnett's complaint. The ALJ granted the motion in an Order issued June 11, 2008. On appeal, the Administrative Review Board (ARB or Board) reversed and remanded because Vinnett had

raised genuine issues of material fact and errors of law on the issue of protected activity.<sup>1</sup> On remand, the case was assigned to a new ALJ, who, after a hearing, dismissed Vinnett's complaint.<sup>2</sup> Vinnett again appealed to the ARB. For the following reasons, the Board affirms the ALJ's decision and order.

### BACKGROUND<sup>3</sup>

Vinnett began working for Respondent Mitsubishi in July 2004. At that time, Respondent was engaged in the business of inspecting and performing periodic maintenance on turbines and generators in both nuclear and non-nuclear facilities. Mitsubishi hired Vinnett as an engineer and field project manager responsible for installing, modifying, and repairing steam turbine engines. Vinnett was stationed at Mitsubishi's Orlando, Florida office, from which he was assigned to other facilities under contract with Mitsubishi to inspect and assess various operational components. In late August 2004, Mitsubishi assigned Vinnett to work onsite for its clients at the Palisades Nuclear Power Plant. Vinnett returned to and resumed work at Respondent's Orlando office on or about October 25, 2004.

At Mitsubishi, John F. Daniels, Operations Manager for Steam Turbine Services supervised Vinnett. Within several months of Vinnett's employment, Daniels became dissatisfied with Vinnett's performance in several areas. Vinnett received a warning letter regarding performance deficiencies from Daniels and Respondent's Human Resource Manager, Bailey Weaver, on January 6, 2005, and Respondent placed him on a performance improvement plan. After continued nonperformance, Mitsubishi terminated Vinnett's employment on February 25, 2005.

Mitsubishi fired Vinnett for several reasons, including: speaking directly to a company client about perceived safety and/or operational concerns rather than following the prescribed chain of command within Mitsubishi for providing such information to Respondent's clients; inappropriate behavior concerning the contents of a CD; multiple false representations concerning authorization for tuition reimbursement; and expensing a personal FedEx package after being told that the company account was not for personal use. After the January 6, 2005 written warning, Mitsubishi identified continued nonperformance issues, including incomplete cost estimates; data sheets error; and Vinnett's failure to undertake and complete tasks Respondent had assigned him, while reassigning the tasks to others.

Vinnett claimed that Mitsubishi terminated his employment because he engaged in ERA-protected activity. On remand, after a hearing on the merits, the ALJ held that Vinnett engaged

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<sup>1</sup> *Vinnett v. Mitsubishi Power Sys.*, ARB No. 08-104, ALJ No. 2006-ERA-029 (ARB July 27, 2010).

<sup>2</sup> *Vinnett v. Mitsubishi Power Sys.*, ALJ No. 2006-ERA-029 (Oct. 22, 2014) (D. & O.).

<sup>3</sup> Unless otherwise noted, the Background summary is excerpted from the ALJ's D. & O. of October 22, 2014.

in protected activity in two categories but failed to qualify for protected activity in three categories.<sup>4</sup> The ALJ also held that Mitsubishi knew of Vinnett's protected activity (categories 1 and 4) and that Vinnett suffered an adverse employment action (i.e., employment termination). On the issue of causation, the ALJ found that "[n]one of the Complainant's protected activity under the ERA were contributing factors to the warning letter" that Vinnett received on January 6, 2005, and based upon his finding that Mitsubishi established by clear and convincing evidence that Vinnett's employment termination was for good cause unrelated to any of Vinnett's protected activity, dismissed Vinnett's complaint. D. & O. at 53, 54.

On appeal, Vinnett claims that the ALJ erred in not finding protected activity for categories two, three, and five.<sup>5</sup> Vinnett also asserts that Mitsubishi's reasons were pretext and that there is temporal proximity between his termination and protected activity. Vinnett claims that his testimony shows that he was continuously "rebuffed" for his protected activity. Brief at 13, 15.

Assuming, without deciding, that the ALJ erred with respect to his findings limiting Vinnett's ERA-protected activity to only pre-implementation work packages and moisture separator reheater concerns, and with regard to his determination of no "contributing factor" causation, the Board nevertheless affirms the ALJ's decision denying Vinnett's claim because the ALJ's finding that Mitsubishi established by clear and convincing evidence that it would have terminated Vinnett's employment absent his protected activity is supported by the substantial evidence of record. That evidence, as the ALJ recounted, "establishes that the Complainant was essentially a non-functioning employee" even after having been counseled and warned to improve his performance, and that following the January 6, 2005 counseling and warning, "Complainant demonstrated that he could not complete assignments in a timely manner, could not multi-task, and could not support the team effort required of this position." D. & O. at 52-53.

### CONCLUSION

Having reviewed the evidentiary record as a whole, and upon consideration of the parties' briefs on appeal, the Board concludes that Vinnett has failed to demonstrate that the ALJ committed reversible error. The ALJ's determination that Mitsubishi established by clear and convincing evidence that it terminated Vinnett's employment for his nonperformance after warning irrespective of any ERA-protected activity is fully supported by substantial evidence, and is otherwise in accordance with applicable law. None of Vinnett's arguments demonstrate

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<sup>4</sup> The ALJ determined that Vinnett's review and correction of pre-implementation work packages (category 1) and reporting of concerns involving moisture separator reheater (category 4) were protected activities under the ERA. The ALJ determined that Vinnett's alleged reporting of deficiencies on Mitsubishi Systems Processes (category 2) and reporting inappropriate work practices (category 3) at Palisades Nuclear Power Plant were not activities protected by the ERA. The ALJ also determined that Vinnett's spare parts list found in the final outage report was not protected (category 5).

<sup>5</sup> *Supra* note 4.

that the ALJ abused his discretion or that any alleged erroneous rulings preclude affirming the ALJ's dismissal. Accordingly, the Board affirms the ALJ's dismissal of Vinnett's complaint.<sup>6</sup>

**SO ORDERED.**

[REDACTED]

[REDACTED]

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

[REDACTED]

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

[REDACTED]

**ANUJ DESAI**  
**Administrative Appeals Judge**

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<sup>6</sup> While we affirm the ALJ's dismissal of Vinnett's claim, we do not endorse every collateral legal issue in the ALJ's legal analysis.