



IN THE MATTER OF:

LAWRENCE CRISCIONE,

ARB CASE NO. 2018-0052

COMPLAINANT,

ALJ CASE NO. 2017-ERA-00009

v.

DATE: MAR 22 2019

U.S. NUCLEAR REGULATORY  
COMMISSION,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

### ORDER DISMISSING COMPLAINT

On May 20, 2014, Lawrence Criscione filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that the Respondent United States Nuclear Regulatory Commission (NRC) had violated the employee protection provisions of the Energy Reorganization Act of 1974 (ERA)<sup>1</sup> and its implementing regulations.<sup>2</sup> After investigating Criscione's complaint, OSHA concluded that NRC is not a covered employer under the Act. Criscione objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ). On June 13, 2018, the ALJ issued an Order Dismissing Complaint on Summary Decision for Lack of Subject Matter Jurisdiction.<sup>3</sup> On June 22, 2018, Criscione filed a timely petition for review with the Administrative Review Board.

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<sup>1</sup> 42 U.S.C. § 5851

<sup>2</sup> 29 C.F.R. Part 24

<sup>3</sup> *Criscione v. U.S. Nuclear Regulatory Commission*, ALJ No. 2017-ERA-009 (ALJ) (June 13, 2018).

On March 7, 2019, Criscione filed a Notice with the Board stating his intention to file an action pursuant to 42 U.S.C. § 5851(B)(4), with the appropriate United States District Court on or after March 22, 2019, and in compliance with 29 C.F.R. part 24.11(a)(b), seeking de novo review. The ERA permits a complainant to file an action in the appropriate district court if the Secretary of Labor has not issued a final decision within one year after the filing of a complaint and if there is no showing that the complainant acted in bad faith in delay of the proceedings. Both conditions are met in this case. Accordingly, given that Criscione has filed a de novo complaint in this action in the U.S. District Court as provided in 42 U.S.C. § 5851(b)(4) and 29 C.F.R. Part 24, we hereby **DISMISS** Criscione's complaint.

**SO ORDERED FOR THE BOARD.**



**WILLIAM T. BARTO**  
Chief Administrative Appeals Judge