



In the Matter of:

DONALD C. SMITH,

ARB CASE NO. 97-075

COMPLAINANT,

(ALJ CASE NO. 97-ERA-25)

v.

DATE: APR 23 1997

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER OF DISMISSAL

On March 26, 1997, the Board issued an Order to Show cause why the captioned matter should not be dismissed, based on the procedural history of this case in which, on March 12, 1997, Administrative Law Judge (ALJ) Lee J. Romero, Jr. issued an Order Granting Summary Decision and Recommended Order of Dismissal in this matter. Complainant had requested a hearing in a previous case (ALJ Case No. 96-ERA-10), seeking to appeal the findings of the District Director that Complainant had failed to establish a *prima facie* case of discrimination under the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988).

Respondent filed a Motion for Summary Decision, averring in part that Case No. 96ERA-10 was the subject of a settlement agreement dated May 15, 1996.¹ In its motion, Respondent further argued that an ALJ has no authority to review a final order issued by the Administrative Review Board.

ALJ Romero issued an Order to Show Cause why this matter should not be dismissed on February 13, 1997. Complaint filed no response to the ALJ's Order to Show Cause. The ALJ noted that the District Director relied in part upon Respondent's showing that it complied with the provisions of the settlement agreement in Case No. 96-ERA-10 in finding that Complainant had failed to establish a *prima facie* case of discrimination in the instant matter. Stating further that there are no regulatory provisions authorizing an ALJ to review final Orders of the Board or

¹ALJ Quentin McColgin issued a recommended Order on May 22, 1996 recommending approval of the settlement agreement and dismissal of the complaint. The Administrative Review Board issued a Final Order Approving Settlement Agreement and Dismissing Complaint on June 24, 1996.

the Secretary of Labor, the ALJ thereupon issued his Order granting Respondent's Motion for Summary Decision and recommending that Case No. 97-ERA-25 be dismissed with prejudice.

Complainant failed to file a response to the Board's March 26, 1997 Order to Show Cause why this case should not be dismissed. Accordingly, this matter is dismissed without prejudice.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member

JOYCE D. MILLER

Alternate Member