



In the Matter of:

**GREGORY LATORRE,**

**ARB CASE NO. 98-040**

**COMPLAINANT,**

**(ALJ CASE NO. 97-ERA-46)**

**v.**

**DATE: February 26, 1999**

**CORIELL INSTITUTE FOR  
MEDICAL RESEARCH,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

Christina M. Valente, Esq., *Rainone & Rainone*  
*Philadelphia, Pennsylvania*

*For the Respondent:*

John T. Kelley, Esq., *Kelley, Wardell & Craig*  
*Haddonfield, New Jersey*

**DECISION AND ORDER OF REMAND**

This case arises under Section 211, the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. §5851 (1994), and the regulations promulgated thereunder at 29 C.F.R. Part 24.<sup>1/</sup> Complainant Gregory LaTorre (LaTorre) alleged that Respondent Coriell Institute for Medical Research (Coriell) violated the ERA when it discharged

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<sup>1/</sup> These regulations were amended in February 1998 to provide, *inter alia*, for review of ERA and other “whistleblower” complaints upon the filing of an appeal by a party aggrieved by an Administrative Law Judge’s decision. *See* 63 Fed. Reg. 6614 (Feb. 9, 1998). In this case, the Administrative Law Judge issued a Recommended Decision and Order on August 12, 1997; accordingly, this matter is before the Board pursuant to the pre-1998 automatic review provision of the regulation. 29 C.F.R. §24.6(a) (1997).

him from employment. In a December 3, 1997 Recommended Decision and Order (R. D. and O.), the Administrative Law Judge (ALJ) determined that Complainant established that Respondent terminated his employment as a result of activity protected under the ERA, and that relief was warranted. R. D. and O. at 41.

The ALJ recommended that Complainant be reinstated to his previous position with Respondent as a Research Technician III. *Id.* at 44. Further, the ALJ recommended that Respondent was liable for full back pay, with interest, and employment benefits commencing from the date of Complainant's separation from employment and continuing until his reinstatement to employment. *Id.*

The ALJ also recommended that Respondent pay to Complainant the amount of \$26,500.00 in compensatory damages for Complainant's "loss of self-esteem, . . . emotional pain and suffering, . . . embarrassment, . . . and financial hardship." *Id.* at 43 (citations omitted); 44. Additionally, the ALJ recommended that all references to LaTorre's having engaged in activity protected under the ERA and "any related claims against him arising out of or in connection with his protected activity" be expunged from Complainant's employment record. *Id.* at 45. Finally, the ALJ recommended that Complainant's request for attorney's fees in the amount of \$3,500.00 be denied without prejudice given that no request for attorney's fees and costs had been submitted for determination at the time of issuance of the R. D. and O.

Neither Complainant nor Respondent filed anything in response to the Board's December 17, 1997 Notice of Review and Order Establishing Briefing Schedule and Preliminary Order (December 17 Order), which provided the parties the opportunity to file briefs or statements in support of or opposing the ALJ's R. D. and O. In accordance with the ERA, the Board's December 17 Order also directed Respondent to provide Complainant with preliminary relief, consistent with the ALJ's R. D. and O. 42 U.S.C. §5851(b)(2)(A).

## **DISCUSSION**

The record in this case has been thoroughly reviewed. We find that it fully supports the ALJ's comprehensive findings and carefully articulated conclusion that Complainant's employment was terminated because he engaged in activities protected by the ERA. R. D. and O. at 41. The record also supports the relief recommended by the ALJ.

As noted above, the ALJ declined to enter in the December 3, 1997 R. D. and O. a recommended order concerning the amount of attorney's fees and costs. Likewise, the Board did not issue a preliminary order concerning attorney's fees and costs in its December 17 Order. Accordingly, this matter must be remanded for a determination of the amount of reasonable attorney's fees and costs to which Complainant is entitled.

## **CONCLUSION**

For the foregoing reasons, we adopt and incorporate by reference the findings and conclusions in the ALJ's R. D. and O. (copy attached) that Respondent violated the ERA in

discharging Complainant from employment. We also adopt and incorporate by reference the ALJ's recommendations regarding relief. This case is remanded for a determination of attorney's fees and costs.<sup>2/</sup>

**SO ORDERED.**

**PAUL GREENBERG**  
Chair

**E. COOPER BROWN**  
Member

**CYNTHIA L. ATTWOOD**  
Acting Member

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<sup>2/</sup> Because this decision resolves all issues with the exception of the collateral issue of attorney fees and costs, it is final and appealable. *See Flour Constructors, Inc. v. Reich*, 111 F.3d 979 (11th Cir. 1997) (under ERA employee protection provision a decision that resolves all issues except attorney fees is final).