



In the Matter of:

TIM TOMLINSON,

ARB CASE NO. 15-051

COMPLAINANT,

ALJ CASE NO. 2012-SDW-002

v.

DATE: October 23, 2015

**FRONTLINE RESIDENTIAL
TREATMENT CENTER, LLC,
D/B/A NORTH STAR
BEHAVIORAL HEALTH,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Steven Smith, Esq.; *Law Offices of Steven Smith; Anchorage, Alaska*

For the Respondent:

Linda Johnson, Esq.; *Clapp, Peterson, Tiemessen, Thorsness & Johnson LLC; Anchorage, Alaska*

BEFORE: E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*; and Joanne Royce, *Administrative Appeals Judge*

**FINAL DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT WITH PREJUDICE**

The Complainant, Tim Tomlinson, filed a complaint under the Safe Drinking Water Act (SDWA), 42 U.S.C.A. § 300j-9(i) (Thomson Reuters 2012), alleging that his employer, North

Star Behavioral Health (North Star), retaliated against him for engaging in SDWA-protected activity. On April 10, 2015, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) concluding that North Star violated the SDWA. Respondent North Star timely petitioned the Administrative Review Board (ARB or Board) for review of the D. & O. Prior to the ARB's consideration of the merits of North Star's appeal, the parties filed a "Joint Request for Approval of Settlement" and a "Settlement Agreement and General Release" (Agreement), by which the parties have agreed to settle Tomlinson's SDWA claim, subject to the ARB's approval of the parties' settlement. The parties have certified that the Agreement constitutes the entire settlement with respect to Tomlinson's SDWA claim. Agreement ¶ 13.

The SDWA's implementing regulations provide that at any time after a party has filed objections to the Assistant Secretary's findings or order, the case may be settled if the participating parties agree to a settlement and, where the Board has accepted the case for review, the Board approves the settlement agreement.¹

Review of the Agreement reveals that it may encompass the settlement of matters under laws other than the SDWA. Agreement ¶¶ 1, 3, 5-7, 9, 19. The Board's authority over settlement agreements is limited to the statutes that are within the Board's jurisdiction as defined by the applicable delegation of authority. Therefore, the Board is restricted in its review and approval of the Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle the SDWA claim over which the ARB has jurisdiction.²

Paragraph 15 of the Agreement provides that the Agreement shall be construed and interpreted in accordance with the laws of the State of Alaska. This "choice of law" provision is interpreted as not limiting the authority of the Secretary of Labor, the ARB, and any federal court with regard to any claim or issue arising under the SDWA, which authority shall be governed in all respects by the laws and regulations of the United States.³

It is noted that the parties further request that the terms of the Agreement remain confidential. Agreement ¶ 10. In this regard the ARB's authority is constrained as a matter of law. The parties' submissions, including the Agreement, become part of the record of the case, and the record is subject to the Freedom of Information Act (FOIA).⁴ FOIA requires federal

¹ 29 C.F.R. § 24.111(d)(2) (2014).

² *Accord Thompson v. Norfolk Southern Ry., Co.*, ARB No. 13-032, ALJ No. 2011-FRS-015, slip op. at 2 (ARB Feb. 28, 2013); *Bhat v. District of Columbia Water & Sewer Auth.*, ARB No. 06-014, ALJ No. 2003-CAA-017, slip op. at 2 (ARB May 30, 2006).

³ *See Hildebrand v. H. H. Williams Trucking, LLC*, ARB No. 11-030, ALJ No. 2010-STA-056, slip op. at 3 (ARB Sept. 26, 2011).

⁴ *Vannoy v. Celanese Corp.*, ARB No. 09-118, ALJ No. 2008-SOX-064 (ARB Sept. 27, 2013).

agencies to disclose requested records unless they are exempt from disclosure under the Act.⁵ Department of Labor regulations set out the procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.⁶

Subject to the aforementioned limitations on the ARB's jurisdiction and authority, the Board accordingly finds that the Agreement is fair, adequate, and reasonable, and thus we **APPROVE** the Agreement and **DISMISS** Tomlinson's SDWA complaint with prejudice.

SO ORDERED.

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

⁵ 5 U.S.C.A § 552 (West 1996 & Supp. 2015).

⁶ 29 C.F.R. § 70 et seq. (2014).