



In the Matter of:

PERETTE L. SHEPPARD,

ARB CASE NO. 09-125

COMPLAINANT,

**ALJ CASE NOS. 2008-STA-019
2008-STA-024**

v.

DATE: February 17, 2010

DEL-JEN, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Complainant:

Cecile M. Scoon, Esq., *Peters & Scoon*, Panama City

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

This case arose under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982.¹ A Department of Labor Administrative Law Judge (ALJ) forwarded the case to the Administrative Review Board for automatic review² of his Recommended Decision and Order dismissing Perette Sheppard's complaint.³ Sheppard, filed a brief in opposition to the R. D. & O. on November 30,

¹ 49 U.S.C.A. § 31105 (Thomson/West Supp. 2008).

² *Sheppard v. Del-Jen, Inc.*, ALJ Nos. 2008-STA-019, -024 (July 20, 2009)(R. D. & O.).

³ *See* 29 C.F.R. § 1978.109(a)(2009).

2009. On December 29, 2009, Sheppard moved for voluntary dismissal of her appeal. She stated that the parties had settled the matter, but she wished the Department of Labor to retain jurisdiction to enforce the settlement agreement.

Under the STAA implementing regulations, the parties may settle a case at any time after the filing of objections to the Assistant Secretary's preliminary findings "if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board"⁴ The regulations require the parties to file a copy of the settlement with the Board.⁵

Accordingly, we ordered the parties to submit to the Board a copy of the settlement agreement signed by both parties and setting forth all the terms and conditions to which the parties have agreed. The Board has now received a copy of the settlement agreement. We review the settlement to determine whether it constitutes a fair, adequate, and reasonable settlement of Sheppard's STAA complaint.⁶

Initially we note that the settlement agreement may encompass the settlement of matters under laws other than the STAA.⁷ The Board's authority over settlement agreements is limited to the statutes that are within the Board's jurisdiction as defined by the applicable statute. Therefore, we approve only the terms of the agreement pertaining to Sheppard's current STAA case.⁸

The Agreement provides that the parties shall keep the terms of the settlement confidential.⁹ The Board notes that the parties' submissions, including the Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA).¹⁰ FOIA requires Federal agencies to disclose requested records unless they are

⁴ 29 C.F.R. § 1978.111(d)(2).

⁵ *Id.*

⁶ 28 C.F.R. §1978.111(d)(2); *see also Poulos v. Ambassador Fuel Oil Co.*, 1986-CAA-001, (Sec'y Order Nov. 2, 1987) in which the Secretary limited review of a settlement agreement to whether the terms of the settlement are a fair, adequate, and reasonable settlement of the Complainant's allegations that the Respondent violated the STAA.

⁷ *See, e.g.*, Confidential Settlement Agreement and Release of All Claims, paras. 1, 4, 12.

⁸ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

⁹ Confidential Settlement Agreement and Release of All Claims, para. 5.

¹⁰ 5 U.S.C.A. § 552 (Thomson/West 1996 & Supp. 2008).

exempt from disclosure under the Act.¹¹ Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.¹² In addition, if the confidentiality agreement were interpreted to preclude Sheppard from communicating with federal or state enforcement agencies concerning alleged violations of law, it would violate public policy and therefore constitute an unacceptable “gag” provision.¹³

Finally, we construe paragraph 9, the choice of law provision, as not limiting the authority of the Secretary of Labor and any federal court, which shall be governed in all respects by the laws and regulations of the United States.¹⁴

As so construed, we find the agreement to be a fair, adequate, and reasonable settlement of Sheppard’s STAA complaint. Accordingly, we **APPROVE** the settlement and **DISMISS** the complaint with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Administrative Appeals Judge

¹¹ *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, -006, slip op. at 2 (ARB June 24, 1996).

¹² 29 C.F.R. § 70 et seq. (2009).

¹³ *Kingsbury v. Gordon Express, Inc.*, ARB No. 07-047, ALJ No. 2006-STA-024, slip op. at 2-3 (ARB Aug. 31, 2007).

¹⁴ *See Phillips v. Citizens Ass’n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec’y Nov. 4, 1991).