U.S. Department of Labor

Office of Administrative Law Judges
50 Fremont Street - Suite 2100
San Francisco, CA 94105

(415) 744-6577
(415) 744-6569 (FAX)

Issue Date: 30 April 2004

CASE NO.: 2003-ERA-00025

In the Matter of:

DAVID A. HANNUM,
Complainant,

v.

FLUOR HANFORD, INC. and MASTER-LEE HANFORD,
Respondents.

ORDER DENYING COMPLAINANT'S MOTIONS TO REOPEN RECORD AND FOR RECONSIDERATION

This matter arises under the Energy Reorganization Act of 1974, as amended, 42 U.S.C. § 5851 *et seq.* ("ERA" or the "Act"), and the regulations promulgated thereunder at 29 C.F.R. Part 24. On March 31, 2004, I issued a Recommended Decision and Order granting Respondents' motions for summary decision and dismissing Complainant's complaint. On April 9, 2004, Complainant submitted a Motion to Publish And Review All Deposition Transcripts Related To The Above Entitled Case And Reconsider. On April 14, 2004, Complainant submitted the following: Motion to Publish And Review All Deposition Transcripts Related To The Above Entitled Case; and Amendment To Motion To Publish And Review All Deposition Transcripts Related To The Above Entitled Case And Reconsider. On April 19, 2004, Complainant submitted a Second Amendment To Motion To Publish And Review All Deposition Transcripts Related To The Above Entitled Case And Reconsider.[1] In addition, Complainant submitted nineteen deposition transcripts of various witnesses taken in February 2004. Respondents Master-Lee Hanford and Fluor Hanford timely filed oppositions to Complainant's various motions.

Complainant seeks reconsideration of my Recommended Decision and Order on grounds that the Order "was determined without first considering all facts supporting the case that are clearly presented in the depositions of all witnesses and in particular the testimony of David Hannum." Complainant's April 9, 2004 Motion to Publish at 1. Complainant accordingly seeks to reopen the record to admit nineteen deposition transcripts. Finally, in his Second Amendment to Motion to Publish, Complainant further alleges that certain filing deadlines "prejudiced the parties." Complainant's April 19, 2004 Second Amendment at 2.

[1] Complainant's motions for reconsideration and amendments thereto are collectively referred to as "Complainant's motion."

As a procedural matter, Complainant's request for reconsideration is not properly before me. Neither the ERA nor the implementing regulations at 29 C.F.R. Part 24 expressly authorize the reconsideration of a Recommended Decision and Order by an Administrative Law Judge ("ALJ"). Furthermore, case law indicates that an ALJ does not have jurisdiction over the matter once the Recommended Decision and Order has been issued. See *Rex v. Ebasco Services, Inc.,* 87-ERA-6 and 40 (ALJ Apr. 13, 1994) (finding that under *Tankersley v. Triple Crown Services, Inc.,* 92-STA-8 (Sec'y Feb. 18, 1993), jurisdiction passes from the presiding judge to the Secretary of Labor after a decision in whistleblower case is issued); *Dutile v. Tighe Trucking, Inc.,* 1993-STA-31 (Sec'y Mar. 16, 1995); *Smith v. Tennessee Valley Auth.,* 1989-ERA-12 (Sec'y June 2, 1994). Accordingly, subsequent to the issuance of the Recommended Decision and Order in this matter on March 31, 2004, jurisdiction passed from this court to the Secretary of Labor. Therefore this office lacks the necessary authority to rule on Complainant's motion for reconsideration.

Alternatively, Complainant cites to Federal Rule of Civil Procedure 60 apparently as authority for his requests. Assuming this court would have jurisdiction to entertain such a motion under Rule 60(b), I find that Complainant fails to show exceptional circumstances or that the nineteen depositions constitute new and material evidence that was not readily available prior to the issuance of the Recommended Decision and Order. [2] Motions for relief from judgment seek extraordinary judicial relief and can be granted only upon a showing of exceptional circumstances. *Kai Wu Chan v. Reno,* 932 F. Supp. 535, 538-39 (S.D.N.Y. 1996) (citing *Ackermann v. United States,* 340 U.S. 193, 199 (1950)); *Good Luck Nursing Home Inc. v. Harris,* 636 F.2d 572, 577 (D.C. Cir. 1980). Rule 60(b)(2) provides relief based on newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial. Fed. R. Civ. P. 60(b)(2); *see* 29 C.F.R. § 18.54(c) (admission of evidence not timely submitted to the ALJ is limited to "new and material evidence [that] has become available which was not readily available prior to the closing of the record"); *Ake v. Ulrich Chemical, Inc.,* 93-STA-41 (Sec'y Mar. 21, 1994).

The parties in this matter were afforded a full and fair opportunity to submit supporting exhibits and documents, including deposition transcripts. In fact, trial in this case was continued from December 2003 to March 2004 to allow more time for parties to collect additional discovery. Complainant himself submitted excerpts of various deposition transcripts in support of his response to Respondents' motions for summary decision, which themselves contained additional excerpts from various deposition transcripts. Complainant has failed to demonstrate that the nineteen transcripts were "not readily available" or that he was excusably ignorant of them prior to issuance of the Recommended Decision and Order. *See id.*; *McNally v. Georgia Power Co.,* 85-ERA-27 (Sec'y Sept. 8, 1992). *See also Good Luck Nursing,* 636 F.2d at 577 (finding that a party who has not presented known facts helpful to its cause when it had the opportunity cannot ordinarily avail itself of Rule 60(b) after it has received an adverse judgment).

[2] While courts have not recognized an administrative law judge's authority to reconsider in this type of case, case law suggests that an ALJ possesses power to correct clerical errors or judgments which have been issued due to inadvertence or mistake. *See Willy v. The Coastal Corp.,* 1985-CAA-1, n.1 (ALJ Dec. 4, 1997) (citing *American Trucking Ass'ns v. Frisco Transp Co*., 358 U.S. 133 (1958)).

Complainant fails to offer evidence that was not readily available, or that exceptional circumstances existed to impede substantial justice from being rendered. The March 31, 2004 Recommended Decision and Order fully considered the allegations, arguments and submissions of the parties. Thus, even if Complainant's motion was properly before this court, his motion for reconsideration and to allow for the submission of nineteen deposition transcripts fails because it does not show exceptional circumstances, new and material evidence, or that a clerical error or judgment warrants reconsideration in this case.

For the reasons stated above, Complainant's motion is **DENIED**.

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GERALD M. ETCHINGHAM
Administrative Law Judge

San Francisco, California

GME/dmr