



Issue Date: 31 March 2005
2003-ERA-00022

CARL R. PATRICKSON
Complainant

v.

ENERGY NUCLEAR OPERATIONS, INC.
Respondent

ORDER

Denying Complainant's Motion for Reconsideration and Denying Request to Stay Attorney Fee Petition

This proceeding arises from a claim of whistleblower protection under the Energy Reorganization Act of 1974 ("ERA"), as amended, 42 U.S.C. § 5851. This statute and implementing regulations at 29 CFR Part 24 protects employees from discrimination in retaliation for engaging in protected activity such as reporting health, safety or environmental violations. In a Recommended Decision and Order rendered March 3, 2005, I recommended reinstatement of Complainant to full employment status at Respondent's facility and awarded reasonable costs and attorney's fees. Counsel for Complainant had thirty (30) days from March 3, 2005, to submit an application for attorney fees and expenses reasonably incurred in connection with this proceeding. Respondent was to have fifteen (15) days following receipt of the application to file objections.

The record shows that on or about March 10, 2005, both parties filed independent, cross, petitions for Review with the Administrative Review Board ("ARB") pursuant to 29 C.F.R. §§ 24.7(d) and 24.8.

On or about March 16, 2005, counsel for the Complainant filed a Motion for Reconsideration of my Recommended Decision and Order. Specifically, counsel for the Complainant requested that I:

- (1) Reconsider the Recommended Decision and Order to the extent that it does not award Mr. Patrickson compensation, back pay, compensatory damages and other equitable relief pursuant to Rule 59(e) of the Federal Rules of Civil Procedure;
- (2) Allow him to amend his pleading to conform with the evidence presented at trial pursuant to Rule 15(b) of the Federal Rules of Civil Procedure and 29 CFR § 18.43(c); and
- (3) Grant relief from the Recommended Decision and Order pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.

In addition, counsel for the Complainant requested that I formally stay the time to submit his fee application until after the ARB has rendered a final decision in the case. The Respondent never filed a response to the Complainant's Motion.

MOTION FOR RECONSIDERATION

The Complainant's Motion for Reconsideration is not properly before me. Neither the ERA nor the implementing regulations at 29 C.F.R. Part 24 expressly authorize a reconsideration of a Recommended Decision and Order by an administrative law judge. I should not retain jurisdiction after a Recommended Decision and Order has been issued. See *Rex v. Ebasco Services, Inc.*, 87-ERA-6 and 40 (ALJ Apr. 13, 1994) (extending to ERA cases *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 a whistleblower case is issued);¹ *Dutile v. Tighe Trucking, Inc.*, 1993-STA-31 (1995); *Smith v. Tennessee Valley Auth.*, 1989-ERA-12 (1994). Moreover, the Motion is not timely as more than ten (10) passed after the Recommended Decision and Order was rendered and before the Motion was filed.

Notwithstanding these procedural defects, I note that the Complainant alleges several legal arguments to justify his having failed to submit properly sufficient information that would allow me to make a determination regarding potential compensatory and monetary damages. Specifically, the Complainant invokes Federal Rules of Civil Procedure 59(e), 54(c), 15(b), and 60(b), as well as 29 CFR § 18.43(c). I note, however, that none of the documentation associated with the Complainant's case file, whether properly admitted into evidence or not, is sufficient to render a determination regarding potential compensatory and monetary damages. Even in the Complainant's Pre-Hearing Submissions, which are arguably not in evidence yet appear to be the only documentation where he broaches the issue of damages, the Complainant fails to specify the precise amount of time he would like to be compensated.

Therefore, after having been fully advised in these premises, the Motion for Reconsideration is **DENIED**.

REQUEST TO STAY ATTORNEY FEE PETITION

The Complainant's counsel also requests that I formally stay the time to submit his fee application until after the ARB renders a final decision. I note that I have discretion whether to address the matter of attorney's fees at this time, and I find that judicial efficiency requires that this matter be resolved. *Beck v. Daniel Construction Co.*, 86-ERA-26 (Sec'y Aug. 3, 1993). Justice delayed is justice denied.

Therefore, after having been fully advised in these premises, the request for stay is **DENIED**.

SO ORDERED

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DANIEL F. SOLOMON
Administrative Law Judge

¹ This principle is especially relevant where, as in this case, both parties have already filed independent, cross, petitions for Review with the Administrative Review Board ("ARB").

NOTICE OF APPEAL RIGHTS: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and