



In the Matter of:

WALTER R. BRICKLEN,

ARB CASE NO. 05-144

COMPLAINANT,

ALJ CASE NO. 2005-CAA-008

v.

DATE: October 31, 2007

**GREAT LAKES CHEMICAL
CORPORATION,**

RESPONDENT.

Appearances:

For the Petitioner:

Walter R. Bricklen, *pro se*, Mount Holly, Arkansas

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

This case arises under the Clean Air Act (CAA), 42 U.S.C.A. § 7622 (West 1994), and implementing regulations at 29 C.F.R. Part 24 (2006)¹. The Complainant, Walter R. Bricklen, has filed a petition for review of an Administrative Law Judge's (ALJ's) Order Approving Settlement.² We approve the ALJ's Order with the reservations noted below and dismiss this complaint with prejudice.

Bricklen filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that the Respondent, Great Lakes Chemical Corporation (Great Lakes), violated the employee protection section of the CAA. OSHA denied Bricklen's CAA complaint on January 25, 2005, and he timely requested a hearing

¹ These regulations have been amended since Bricklen filed his complaint, but the amended regulations are not implicated in this case. 72 Fed. Reg. 44,956 (Aug. 10, 2007).

² Bricklen appears *pro se* before the Board but was represented by counsel before the ALJ and during settlement negotiations.

pursuant to 29 C.F.R. § 24.4(d). Prior to the scheduled hearing, the parties negotiated and executed a Settlement Agreement and Release, which both Bricklen and Terry Steen, Great Lakes Human Resource Manager, signed. The parties filed the Settlement Agreement with the ALJ along with the parties' Joint Motion to Approve Settlement and Dismiss Proceeding with Prejudice. On August 15, 2005, the ALJ issued an Order Approving Settlement. He determined that the terms of the Settlement Agreement were fair, adequate, and reasonable. He therefore granted the parties' Joint Motion To Approve Settlement and dismissed the complaint.³ On August 23, 2005, Bricklen filed a timely petition for review of the ALJ's Order Approving Settlement with the Administrative Review Board (ARB or Board).

The Secretary of Labor has delegated authority to the ARB to review an ALJ's recommended decision in cases arising under the CAA's whistleblower protection provision and to issue the final agency decision.⁴ Under the Administrative Procedure Act, the ARB, as the Secretary's designee, acts with all the powers the Secretary would possess in rendering a decision under the whistleblower statutes. The Board reviews the ALJ's recommended decision de novo.⁵ It is not bound by an ALJ's findings of fact and conclusions of law because the recommended decision is advisory in nature.

1. Bricklen's Request for Damages

Bricklen seeks damages for Great Lakes's alleged breach of the settlement agreement. The issue of whether a settlement agreement has been breached is not a matter for the Board to determine. "A settlement is a contract. Its construction and

³ *Bricklen v. Great Lakes Corp.*, ALJ No. 2005-CAA-008 (ALJ Aug. 15, 2005).

⁴ *See* 29 C.F.R. § 24.8. *See also* Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002) (delegating to the ARB the Secretary's authority to review cases arising under, inter alia, the statutes listed at 29 C.F.R. § 24.1(a)).

⁵ *See* 5 U.S.C.A. § 557(b) (West 1996); 29 C.F.R. § 24.8; *Stone & Webster Eng'g Corp. v. Herman*, 115 F.3d 1568, 1571-1572 (11th Cir. 1997); *Berkman v. U.S. Coast Guard Acad.*, ARB No. 98-056, ALJ No. 97-CAA-2, 97 CAA-9, slip op. at 15 (ARB Feb. 29, 2000). The CAA's amended regulations provide for substantial evidence review of the ALJ's factual findings. 29 C.F.R. § 24.110(b) (2007). Substantial evidence is that which is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clean Harbors Env'tl. Servs. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)). As indicated above, even if the Board applied a substantial evidence review to the ALJ's findings in this case, such review would not change the outcome of our decision, because even applying the less restrictive de novo review standard, we agree with the ALJ's ultimate recommendation that Bricklen's complaint be dismissed.

enforcement are dictated by principles of contract law.”⁶ The CAA whistleblower section provides for enforcement of settlement agreements in the appropriate United States district court.⁷ Thus, the federal district courts, not this Board, have jurisdiction to consider actions based on alleged settlement breaches.⁸

Bricklen also seeks damages for Great Lakes’s alleged failure to comply with discovery in this case, attorney misconduct, blackmail, extortion, mental anguish, and emotional stress.⁹ He does not seek to repudiate the Settlement Agreement and proceed with his CAA claim. In fact, he has already elected to treat the ALJ’s approval of the settlement of his CAA complaint as final by agreeing to dismissal of his CAA complaint, accepting a check for \$29,321.68 in settlement of his claim, and now claiming that Great Lakes has breached the agreement. The Board’s authority in this case is limited to the statutes within its jurisdiction and is defined by the applicable statutes.¹⁰ None of these statutes authorizes the Board to award damages for the issues Bricklen raises. Therefore, we restrict our review in this case to ascertaining whether the ALJ properly approved the Settlement Agreement.

2. Review of the Settlement Agreement

We have reviewed the Settlement Agreement and concur with the ALJ’s determination that it is fair, adequate and reasonable. But we note that the agreement encompasses the settlement of matters under laws other than the CAA. 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. Thus, our approval is limited to this case, and we approve the Agreement only insofar as it pertains to Bricklen’s CAA claim in ARB No. 05-144.

Furthermore, the agreement includes a confidentiality agreement, prohibiting Bricklen from disclosing any of the terms of the agreement with certain specified exceptions.¹¹ If the confidentiality agreement were interpreted to preclude Bricklen from

⁶ *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-033, slip op. at 8 (ARB Nov. 10, 1997).

⁷ 42 U.S.C.A. § 7622(e)(1).

⁸ *Taylor v. Greyhound Lines*, ARB No. 06-137, ALJ No. 2006-STA-019, slip op. at 4 (ARB Apr. 30, 2007).

⁹ Bricklen Brief at 16.

¹⁰ *See Pawlowski v. Hewlett-Packard Co.*, ARB No. 99-089, ALJ No. 1997-TSC-003, slip op. at 2 (ARB May 5, 2000).

¹¹ Settlement Agreement at 2-3, para. 6.

communicating with federal or state enforcement agencies concerning alleged violations of law, it would violate public policy and therefore constitute an unacceptable “gag” provision.¹²

Paragraph 11 of the Agreement states that the laws of the state of Arkansas shall govern the agreement.¹³ We construe this 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

Accordingly, with the reservations noted above, we **APPROVE** the ALJ’s Order Approving Settlement and **DISMISS** the complaint with prejudice.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

¹² *Ruud, supra*, slip op. at 5; *Conn. Light & Power Co. v. Sec’y, U.S. Dep’t of Labor*, 85 F.3d 89, 95-96 (2d Cir. 1996). The Board notes that the parties’ submissions, including the Settlement Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA). 5 U.S.C.A. § 552 (West 2006). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act. *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ No. 1996-TSC-005, -006, slip op. at 2 (ARB June 24, 1996). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. 29 C.F.R. § 70 et seq. (2006).

¹³ *Id.* at 4, para. 11.

¹⁴ *Nason v. Maine Yankee Atomic Power Co.*, ARB No. 99-091, ALJ No. 1997-ERA-037, slip op. at 2 (Mar. 20, 1998); *see also* 42 U.S.C.A. § 7622(b)(2)(A).