



In the Matter of:

BRENDA W. SHELTON,

ARB CASE NO. 98-100

COMPLAINANT,

ALJ CASE NO. 95-CAA-19

v.

DATE: June 22, 1998

**OAK RIDGE NATIONAL LABORATORY;
LOCKHEED MARTIN ENERGY SYSTEMS, INC.;
MARTIN MARIETTA CORPORATION; MARTIN
MARIETTA TECHNOLOGIES, INC.; LOCKHEED
MARTIN CORPORATION; UNITED STATES
DEPARTMENT OF ENERGY;**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**ORDER DENYING INTERLOCUTORY APPEAL
AND AMENDING BRIEFING SCHEDULE**

Complainant has filed a motion in the form of a letter dated May 4, 1998, addressed to the Executive Director of the Administrative Review Board. The motion requests reversal of the Chief Administrative Law Judge's order of August 2, 1995. That order rejected Complainant's argument that the Wage and Hour Division's determination in favor of Complainant became the final order of the Department of Labor by operation of law because Respondents did not file a request for a hearing with the Chief Administrative Law Judge within five calendar days of the Administrator's order pursuant to 29 C.F.R. §24.4(d)(3)(i) (1997).

Complainant's motion amounts to an interlocutory appeal, and the Secretary has held that such appeals are disfavored. *Carter v. B & W Nuclear Technologies, Inc.*, Case No. 94-ERA-13, Sec. Ord. Denying Interlocutory Appeal, Sept. 28, 1994. In *Carter* the Secretary explained that:

The Courts as well as the Secretary have held that there is "a strong policy against piecemeal appeals." *Admiral Insurance Co. v. United States District Court for the District of Alabama*, 881 F.2d 1486, 1490 (9th Cir. 1989); *Marchese v. City of Easton*, Case No. 92-WPC-00005, Sec. Ord., March 10, 1994, slip op. at 3-4. . . . [T]he Secretary has refused to accept interlocutory appeals. See *Marthin v. TAD Technical Services Corp.*, Case Nos. 94-WPC-1, 2, 3, Sec. Ord. Denying

Interlocutory Appeal, Aug. 22, 1994, slip op. at 1-2; *Marchese*, at 3-4; *Porter v. Brown & Root, Inc.*, Case No. 91-ERA-4, Sec. Ord. to Show Cause, Sept. 23, 1993; *Manning v. Detroit Edison Corp.*, Case No. 90-ERA-28, Sec. Ord. Denying Permission to File Interlocutory Appeal, Aug. 23, 1990; *Corder v. Bechtel Energy Corp.*, Case No. 88-ERA-9, Sec. Ord., Oct. 3., 1988, slip op. at 2; *Shusterman v. Ebasco Services, Inc.*, Case No. 87-ERA-27, Sec. Ord. Denying Remand, July 2, 1987, slip op. at 2.

Carter, slip op. at 2-3. Complainant has not offered any reasons why we should depart from the usual practice of avoiding piecemeal appeals.

Complainant's motion for reversal of the ALJ's order of August 2, 1995, is **denied**. Complainant may raise any arguments concerning the timeliness of Respondent's request for a hearing in her brief challenging the ALJ's recommended decision.^{1/}

Complainant's request for an extension of time in which to file her opening brief or appendix is **granted**. Complainant may file an initial brief not to exceed forty (40) double-spaced typed pages, on or before **July 22, 1998**. Respondents may file reply briefs, not to exceed forty (40) double-spaced typed pages, on or before **August 21, 1998**. Complainant may file a rebuttal brief, exclusively responsive to the reply briefs, and not to exceed twenty (20) double-spaced typed pages, on or before **September 8, 1998**. All other terms of the Board's April 2, 1998 Notice of Review and Order Establishing Briefing Schedule and Order Requiring Submission of Record Appendix remain in effect.

SO ORDERED.

KARL J. SANDSTROM
Chair

PAUL GREENBERG
Member

CYNTHIA L. ATTWOOD
Acting Member

^{1/} In a footnote in her letter-motion, Complainant appears to raise questions about the impartiality of Chief Administrative Law Judge Vittone, but does not request any specific relief in that regard.