



In the Matter of:

SYED M. A. HASAN,

ARB CASE NO. 02-096

COMPLAINANT,

ALJ CASE NO. 2002-ERA-18

v.

DATE: July 16, 2002

**J.A. JONES MANAGEMENT SERVICES,
INC., LOCKWOOD GREENE ENGINEERING,
INC., AND LOCKWOOD GREENE ENGINEERING
TECHNOLOGIES, INC.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**ORDER DENYING COMPLAINANT'S EMERGENCY MOTION TO VACATE ALJ'S
ORDERS DENYING MOTION TO AMEND COMPLAINT, DENYING MOTION TO
COMPEL AND DENYING REQUEST FOR CONTINUANCE**

Complainant Syed M. A. Hasan has filed a complaint alleging that the Respondents J.A. Jones Management Services, Inc.; Lockwood Greene Engineering, Inc.; and Lockwood Greene Engineering Technologies have retaliated against him in violation of the whistleblower protection provisions of the Energy Reorganization Act (ERA), 42 U.S.C.A § 5851 (West 1995). As provided in 29 C.F.R. §§ 24.4 (d)(3) and 24.6, this case was assigned to a Department of Labor Administrative Law Judge (ALJ) to schedule a hearing and issue a recommended decision and order. On February 16, 2002, the ALJ scheduled the hearing for July 18, 2002.

Hasan has filed an emergency motion with the Administrative Review Board requesting the Board to vacate three interlocutory orders filed by the ALJ: 1) Order Denying Motion to Amend Complaint (July 8, 2002); 2) Order Denying Motion to Compel (July 8, 2002); and 3) Order Denying Request for Continuance (July 12, 2002).

The Secretary and the Administrative Review Board have held many times that interlocutory appeals are generally disfavored, and that there is a strong policy against piecemeal appeals. *See e.g., Amato v. Assured Transportation and Delivery, Inc.*, ARB No. 98-167, ALJ No. 98-TSC-6 (ARB Jan. 31, 2000); *Hasan v. Commonwealth Edison Co.*, ARB No. 99-097; ALJ No. 99-ERA-17 (ARB Sept. 16, 1999); *Carter v. B & W Nuclear Technologies, Inc.*, ALJ No. 94-ERA-13 (Sec'y Sept. 28, 1994). Hasan argues most strenuously in his emergency motion that the ALJ's orders denying his motion to compel and his motion to amend complaint are erroneous. However, Hasan has not suggested any reason that the Board should depart from its strong policy against piecemeal appeals,

nor has the Board, upon review of Hasan's motion, gleaned any such reason. Moreover, the Board fully concurs with the ALJ's evaluation of Hasan's interlocutory appeal:

The Orders of July 8, 2002, concerned discovery and not allowing Complainant to amend his complaint up to the date of the scheduled hearing. The Court is of the opinion that the Orders of July 8, 2002, do not involve a controlling question of law as to which there is substantial ground for difference of opinion. The Court is of the opinion that an immediate appeal from the Orders would not materially advance the ultimate termination of the litigation. To the contrary, the Court is of the opinion that this is the type of interlocutory appeal that the Secretary and the ARB generally disfavor.

Order Denying Request for Continuance at 2. Hasan has perfected his objections to the ALJ's orders. If, after the ALJ issues a recommended decision and order, Hasan wishes to appeal such order, he may then raise all of his objections to the order, thus avoiding the piecemeal litigation of this case.

In regard to Hasan's appeal of the ALJ's Order Denying Request for Continuance, we have previously held, "[t]he Board should be particularly wary of interfering with an ALJ's control over the time, place, and course of a hearing, but rather should support the sound exercise of an ALJ's broad discretion in this area." *Hasan v. Commonwealth Edison Co.*, ARB No. 99-097, ALJ No. 1999-ERA17 (Sept. 16, 1999).

Finally, we note that in *Plumley v. Federal Bureau of Prisons*, 86-CAA6 (Sec'y April 29, 1987), the Secretary of Labor described the procedure for obtaining review of an Administrative Law Judge's interlocutory order. The Secretary acknowledged that 29 C.F.R. Part 24, which establishes the procedures for litigation and administrative review of whistleblower complaints under the ERA does not provide for interlocutory review by the Secretary of ALJ rulings on motions in the course of administrative hearings. Slip op. at 2. The Secretary concluded that "[t]o the extent any situation is not provided for in those regulations, the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18 . . . , and the Federal Rules of Civil Procedure apply." *Id.* Turning to 29 C.F.R. Part 18 for guidance, the Secretary noted that 29 C.F.R. § 18.29(a), which describes the authority of administrative law judges, authorizes such judges to "take any appropriate action authorized by the Rules of Civil Procedure for the United States District Courts" *Id.* The Secretary determined that where an Administrative Law Judge (ALJ) has issued an order of which the party seeks interlocutory review, an appropriate action would be for the ALJ to follow the procedure established in 28 U.S.C. § 1292(b)¹ for certifying interlocutory questions for appeal from federal district courts to appellate courts. *Id.* In *Plumley* the Secretary ultimately concluded that because no ALJ had certified the questions of law raised by the respondent in his interlocutory appeal as provided in 28 U.S.C. §

1292(b), "an appeal from an interlocutory order such as this may not be taken."
(Citations omitted).

Although the ALJ has issued no written order refusing to certify Hasan's interlocutory appeals, Hasan avers in his emergency motion that "I informed Ms. Battle of the ARB that I have to file the above emergency motion with the ARB even though ALJ Price (on July 10, 2002), through his Legal Technician, verbally rejected my request for permission to file the above Emergency Motion with the ARB of the DOL." Complainant's Emergency Motion to Vacate ALJ Price's Orders of July 8, 2002 at 1-2. Given our determination that Hasan has failed to establish a basis for departing from our policy against piecemeal appeals, it is not necessary for us to determine if, or under what circumstances, we would consider an interlocutory appeal that has not been certified by an ALJ.

Accordingly, for the foregoing reasons, we deny Hasan's emergency motion to vacate ALJ's orders denying motion to amend complaint, denying motion to compel and denying request for continuance.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge