



**In the Matter of:**

**THOMAS J. SAPORITO, JR.,**

**ARB CASE NO. 04-079**

**COMPLAINANT,**

**ALJ CASE NOS. 89-ERA-7  
89-ERA-17**

**v.**

**DATE: December 17, 2004**

**FLORIDA POWER & LIGHT COMPANY,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Thomas J. Saporito, Jr., pro se, *Boynton Beach, Florida***

***For the Respondent:***

**Mitchell S. Ross, Esq., Ellen S. Malasky, Esq., *Florida Power & Light Company, Juno Beach, Florida***

**James S. Bramnick, Esq., *Akerman Senterfitt, Miami, Florida***

**FINAL DECISION AND ORDER**

This matter arises under the whistleblower protection provision of the Energy Reorganization Act, 42 U.S.C.A. § 5851 (West 1989) (ERA) and implementing regulations, 29 C.F.R. Part 24 (1989).<sup>1</sup> Petitioner Thomas Saporito objects to a Final Decision and Order issued by this Board in 1998 and affirmed by the Eleventh Circuit Court of Appeals in 1999. *Saporito v. Florida Power & Light Co.*, ARB No. 98-008, ALJ Nos. 89-ERA-7, 89-ERA-17 (Aug. 11, 1998), *aff'd*, 199 F.3d 130 (11th Cir.1999) (unpublished table decision), *reh'g en banc denied*,

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<sup>1</sup> Congress amended § 5851 in 1992. Pub. L. No. 102-486, Title XXIX, §§ 2902(a) to (g), (h)(2), (3), 106 Stat. 3123, 3124 (1992). This case arose in 1989, and none of the 1992 amendments pertain to the issues before us. Accordingly, we refer to the 1989 versions of § 5851 and implementing regulations.

210 F.3d 395 (11th Cir. 2000). Saporito argues that the Board's 1998 decision contains errors of law and fact and is based in part on a defective hearing transcript. We conclude that the Eleventh Circuit decision bars consideration by us of Saporito's latest claims.

Section 5851 of the ERA protects employees in the nuclear power industry from adverse employment actions by employers wishing to discourage employees from speaking out about nuclear power hazards. Section 5851 achieves its protective goals by providing for agency investigations of employee complaints, agency adjudication of employee complaints, and judicial review of final agency decisions.

In 1989 Saporito filed an ERA whistleblower complaint against his employer, Florida Power & Light. After investigation by the Labor Department and two hearings on the record, Labor Department Administrative Law Judges (ALJs) twice issued recommended decisions dismissing Saporito's complaint on the merits. Saporito exercised his right to appeal the ALJ decisions to the Secretary of Labor and subsequently, to this Board. The Board ultimately issued a final agency decision and order dismissing Saporito's complaint for lack of merit. Saporito invoked his right to judicial review and appealed the Board's final decision and order to the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit summarily affirmed the Board decision and denied Saporito's request for rehearing en banc.

The Eleventh Circuit decision is the final adjudication on the merits of Saporito's 1989 complaint. That decision stands as a complete bar to further review of the merits of Saporito's complaint. "[T]he doctrine of *res judicata* provides that when a final judgment has been entered on the merits of a case, '[i]t is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.'" *Nevada v. United States*, 463 U.S. 110, 129-130, 103 S. Ct. 2906, 2918 (1983) (internal citation omitted).

Saporito casts some of his current objections as motions for "reconsideration" of our 1998 decision. Whatever authority we had to reconsider our own order was extinguished long ago by the Court of Appeals' conclusive disposition.

Accordingly, Saporito's petition for a new trial and motions for reconsideration are **DENIED** and the matter is **DISMISSED**.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**