



In The Matter Of:

EDWARD P. HOLUB,  
  
COMPLAINANT,

CASE NO. 93-ERA-25

DATE: July 8, 1996

v.

BABCOCK & KING, INC., FIVE STAR PRODUCTS, INC.,  
U.S. GROUT CORP., THE NOMIX CORP.,  
THE NASH BABCOCK ENGINEERING COMPANY,  
CONSTRUCTION PRODUCTS RESEARCH, INC.,  
INTERNATIONAL CONSTRUCTION PRODUCTS  
RESEARCH, INC., FIVE STAR CONSTRUCTION  
PRODUCTS CANADA, INC.,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD<sup>1/</sup>

### ORDER

Before the Board is a request for interlocutory review of an order issued by the Administrative Law Judge (ALJ) in this case concerning the Respondents' Motion for Summary Decision (Order). Following the issuance of the Order, which in large part denied Respondents' Motion, Respondents moved to amend the Order to include a certification to the Secretary of the issue whether any of the Respondents are subject to the employee whistleblower provision of the Energy Reorganization Act of 1972, as amended (ERA), 42 U.S.C. 5851 (1988 and Supp. V). The ALJ denied that motion. Thereafter, on June 19, 1996, Respondents requested that the Secretary grant interlocutory review of the jurisdictional issue presented.

---

<sup>1/</sup> On April, 17, 1996, Secretary's Order 2-96 was signed delegating jurisdiction to issue final agency decisions under the environmental whistleblower statutes and the regulations at 29 C.F.R. Part 24, to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996)(copy attached).

Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order and regulations under which the Board now issues final agency decisions. A copy of the final procedural revisions to the regulations (61 Fed. Reg. 19982), implementing this reorganization is also attached.

There is no provision for interlocutory appeals to the Secretary (or the Board), either in the regulations implementing the ERA, 29 C.F.R. Part 24 (1995), or the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18. For the reasons articulated below, we decline to exercise any discretion the Board may have to entertain such an appeal.

Interlocutory appeals are generally disfavored. 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); *Shusterman v. Ebasco Services, Inc.*, Case No. 87-ERA-27, Sec. Ord. Denying Remand, July 2, 1987, slip op. at 2. To date, the Secretary has refused to accept interlocutory appeals. *See Manning v. Detroit Edison Corp.*, Case No. 90-ERA-28, Sec. Ord. Denying Permission to File Interlocutory Appeal, Aug. 23, 1990, slip op. at 204; *Shusterman* at 2; *Plumley v. Federal Bureau of Prisons*, Case No. 86-CAA-6, Sec. Ord., April 29, 1987, slip op. at 2-6; *Malpass and Lewis v. General Electric Co.*, Case Nos. 85-ERA-38, 39, Sec. Ord., Dec. 20, 1985; *Marchese v. City of Easton*, Case No. 92-WPC-00005, Sec. Ord., March 10, 1994.

Respondents have presented no persuasive basis for us to assert interlocutory jurisdiction in this case. Therefore, Respondents' request for interlocutory review is denied.

SO ORDERED.

DAVID A. O'BRIEN  
Chair

KARL J. SANDSTORM  
Member

JOYCE D. MILLER  
Alternate Member