



In the Matter of:

MARK G. SABAN,

ARB CASE NO. 03-143

COMPLAINANT,

ALJ CASE NO. 03-PSI-001

v.

DATE: May 17, 2006

MORRISON KNUDSEN,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Mark G. Saban, pro se, Chicago, Illinois

For the Respondent:

Keith R. Spiller, Esq., Eric S. Clark, Esq., Thompson Hine LLP, Cincinnati, Ohio

ORDER DENYING RECONSIDERATION

On March 30, 2005, the Administrative Review Board (ARB or Board) issued a Final Decision and Order in this case arising under the whistleblower protection provision of the Pipeline Safety Improvement Act of 2002 (PSI).¹ The Board concluded that the PSI did not apply retroactively to Saban's complaint and therefore dismissed his complaint. *Saban v. Morrison Knudsen*, ARB No. 03-143, ALJ No. 03-PSI-001 (ARB March 30, 2005). On April 18, 2005, Saban filed a Petition to Reconsider Final Decision and Order (Petition) requesting that the Board reconsider its ruling and grant his request for relief.

¹ That provision prohibits a person who owns or operates a pipeline facility, or a contractor or subcontractor of such a person, from discharging or otherwise discriminating against an employee because the employee engaged in any of various protected activities, e.g., informing the employer (or the Federal government) about violations of pipeline safety orders or rules, or, after informing the employer about an illegal practice pertaining to pipeline safety, refusing to engage in that activity. See 49 U.S.C.A. § 60129(a) (West. Supp. 2005).

The ARB is authorized to reconsider earlier decisions. See *Knox v. United States Dep't of Interior*, ARB No. 03-040, ALJ No. 2001-CAA-3 (ARB Oct. 24, 2005). The Board has adopted principles federal courts employ in deciding requests for reconsideration. We will reconsider our decisions under similar limited circumstances, which include: (i) material differences in fact or law from that presented to a court of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the court's decision, (iii) a change in the law after the court's decision, and (iv) failure to consider material facts presented to the court before its decision. See, e.g., *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995); *Virgin Atl. Airways, Ltd. v. National Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992); *Weinstock v. Wilk*, 2004 WL 367618, at *1 (D. Conn. Feb. 25, 2004); *Motorola, Inc. v. J.B. Rodgers Mech. Contractors, Inc.*, 215 F.R.D. 581, 582-586 (D. Ariz. 2003).

We have reviewed Saban's Petition and its supporting documents. Saban appears before the Board pro se. Therefore, we will construe his Petition liberally. See *Young v. Schlumberger Oil Field Servs.*, ARB No. 00-075, ALJ No. 2000-STA-28, slip op. at 9-11 (ARB Feb. 28, 2003). Saban argues that the PSI, which became effective on December 17, 2002, applies retroactively to 1999 when Morrison Knudsen terminated his contract. The following contains the essence of Saban's argument:

Since the law was signed in action around December 2002, the action words used in § 60129 (a)(1)(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or any other Federal law relating to pipeline safety, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or any other Federal law relating to pipeline safety...The above words commenced, caused to be commenced, or is about to...clearly means to me a past (prior effect date of the law, retroactive), a present and a future action from the effect date of the (PSI and or ACT).

Petition at 2.

But neither this nor any other portion of Saban's Petition presents any facts, legal authority, or logical theory that the PSI applies retroactively. Nor does the Petition

describe any of the above-mentioned circumstances under which we will grant a request for reconsideration. Therefore, we **DENY** his Petition.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge