



In the Matter of:

BERNICE JOHNSON,

ARB CASE NO. 06-067

COMPLAINANT,

ALJ CASE NO. 2005-SDW-2

v.

DATE: May 25, 2006

EG&G DEFENSE MATERIALS, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Mick G. Harrison, Esq., Berea, Kentucky

**FINAL ORDER GRANTING COMPLAINANT'S
MOTION TO WITHDRAW PETITION FOR REVIEW**

On February 13, 2006, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order in this case arising under the Safe Drinking Water Act (SDWA).¹ The ALJ found that the Complainant, Bernice Johnson, failed to establish by a preponderance of the evidence that she had engaged in protected activity²

¹ 42 U.S.C.A. § 300j-9(i) (West 2003).

² The SDWA's whistleblower protection provision prohibits an employer from discharging or otherwise discriminating against an employee with respect to compensation, terms, conditions or privileges of employment, i.e., taking adverse action, because the employee has notified the employer of an alleged violation of the Act, has commenced any proceeding under the Act, has testified in any such proceeding or has assisted or participated in any such proceeding. 42 U.S.C.A. § 300j-9(i) (1)(A)(C). *See also* 29 C.F.R. § 24.2 (2005). To prevail on a complaint of unlawful discrimination under the whistleblower protection provision, a complainant must establish by a preponderance of the evidence that the respondent took adverse employment action against the complainant because he or she

and consequently recommended that her complaint against the Respondent, EG&G Defense Materials, Inc., be dismissed.³

The Secretary of Labor has delegated her authority to issue final administrative decisions in cases arising under the SDWA to the Administrative Review Board.⁴ Johnson filed a timely petition requesting the Board to review the ALJ's R. D. & O.⁵ In response the Board issued a Notice of Appeal and Order Establishing Briefing Schedule.

On April 18, 2006, Johnson filed a Motion to Withdraw her Petition for Review. Johnson averred,

After a thorough analysis by counsel of the February 13, 2006, R. D. & O. of Honorable Administrative Law Judge Richard E. Huddleston, the trial record transcripts and exhibits, and the applicable law, performed in preparation of Complainant's initial brief to the ARB, Complainant, after consultation with her counsel, has concluded that it is in her interests to withdraw her Petition for ARB Review of the ALJ's R. D. & O.[⁶]

Johnson further stated that she understood that as a result of withdrawing her petition for review, the ALJ's R. D. & O. would become the Department of Labor's final decision.⁷ She also asserted that her counsel had consulted with the counsel for EG&G and that EG&G's counsel advised the Complainant's counsel that she did not object to Johnson's withdrawal of her petition for review in this matter. EG&G did not file a further response

engaged in protected activity *Powers v. Tennessee Dep't of Env't & Conservation*, ARB Nos. 03-061 and 03-125, ALJ Nos. 2003-CAA-8 and 16, slip op. at 2 (ARB Aug. 16, 2005); *Jenkins v. United States Env't'l Prot. Agency*, ARB No. 98-146, ALJ No. 1988-SWD-2, slip op. at 16-17 (ARB Feb. 28, 2003).

³ Recommended Decision and Order (R. D. & O.) at 7-11.

⁴ Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64272 (Oct. 17, 2002); 29 C.F.R. §§ 24.1, 24.8.

⁵ 29 C.F.R. § 24.8(a).

⁶ Complainant Bernice Johnson's Motion to Withdraw Petition for Review (Mot.) at 1.

⁷ *Id.* at 1-2.

to Johnson's motion. Accordingly, we **GRANT** Johnson's motion and **DISMISS** her appeal.⁸

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

⁸ *Accord Erickson v. United States EPA*, ARB No. 04-086; ALJ Nos. 99-CAA-2, 01-CAA-8, 01-CAA-8, 01-CAA-13, 02-CAA-3, 02-CAA-18, 03-CAA-11, 03-CAA-19, 04-CAA-1, slip op. at 3 (ARB Jan. 14, 2005) (Board does not require a petitioner to demonstrate cause for withdrawing appeal).