



In the Matter of:

JOHN J. BELIVEAU, JR.

ARB CASE NO. 98-032

COMPLAINANT,

ALJ CASE NO. 97-SDW-6

v.

DATE: June 26, 1998

NAVAL UNDERSEA WARFARE CENTER

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

The Administrative Law Judge submitted a Recommended Order of Dismissal in this case arising under the Toxic Substances Control Act of 1986, 15 U.S.C. §2622 (1988); the Water Pollution Control Act, 33 U.S.C. §1367 (1988); the Solid Waste Disposal Act, 42 U.S.C. §6971 (1988); the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9610 (1988); the Resource Conservation and Recovery Act, 42 U.S.C. §6971 (1988); the Clean Air Act, 42 U.S.C. §7622 (1988) (collectively the Acts); and the regulations implementing the Acts at 29 C.F.R. Part 24. The ALJ denied Complainant's motion that his complaint of February 15, 1995, be reopened and the settlement agreement voided because it contains several terms which Complainant alleges are against public policy. Complainant argued that the settlement had never been approved by the Secretary and therefore never took effect. The ALJ found that when a complaint is settled before a determination has been issued by the Wage and Hour Division,^{1/} there is no requirement that the settlement be reviewed and approved by the Secretary.^{2/}

In an Order Denying Interlocutory Appeal, the Administrative Review Board held that the authority of the Board to review and approve settlements in whistleblower cases "is exercised only under the circumstances where a settlement is reached between the parties after an appeal of a

^{1/} Complaints under the Acts are now investigated and determinations are issued by the Occupational Safety and Health Administration, rather than the Wage and Hour Division. Secretary's Order No. 6-96 (62 Fed. Reg. 111, Jan. 2, 1997).

^{2/} The Administrative Review Board now exercises the powers of the Secretary in whistleblower cases under the Acts. Secretary's Order 2-96 (61 Fed. Reg. 19978, May 3, 1996).

Department of Labor investigative agency (Wage and Hour or OSHA) finding to the Office of Administrative Law Judges, or where a settlement is entered after issuance of an ALJ's recommended order and such matter is before the Board for review." *Beliveau v. Naval Undersea Warfare Center*, ARB Case No. 97-097, 97-SDW-1 and 4, Order Denying Interlocutory Appeal, Aug. 14, 1997, slip op. at 3. In this case, the parties agreed to a settlement before the Wage and Hour Division had concluded its investigation and issued its findings. Until a determination has been issued by the investigative agency and a request for a hearing has been made by one of the parties, there is no proceeding pending before the Office of Administrative Law Judges or the Administrative Review Board and no requirement that the Secretary enter into a settlement to terminate any such proceeding.

As this question has already been decided by the Board, we reject Complainant's exceptions to the ALJ's recommended order and dismiss this case.

SO ORDERED.

KARL J. SANDSTROM

Chair

PAUL GREENBERG

Member

CYNTHIA L. ATTWOOD

Acting Member