



In The Matter Of:

WILLIAM C. BIDDY,

COMPLAINANT,

CASE NO. 95-TSC-7

DATE: June 19, 1996

v.

ALYESKA PIPELINE SERVICE COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

SECOND ORDER

On May 31, 1996, the Board issued an Order requiring the parties to advise us as to the “actual amount of money to be paid to the Complainant pursuant to the proposed settlement.” Order at 2. On June 10, 1996, we received a Joint Response from counsel purporting to provide such information, but which in fact does not do so. The response states that no part of the amount to be paid in satisfaction of Complainant’s claim before the Department of Labor will be paid to Complainant’s attorney for fees or costs. The response further advises that “all of his [Complainant’s] attorneys’ fees and cost reimbursements due his attorney, including *fees and costs relating to this matter*, will be paid out of the proceeds of [the settlement of Complainant’s case pending in the State of Alaska].” (Emphasis supplied) Joint Response at 2-3.

^{1/} 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.

Counsel misapprehends the Board's concern. In order for the Board to determine if the settlement agreement is fair, adequate and reasonable, it must know the amount the Complainant will ultimately receive pursuant to the settlement of his complaint. In evaluating the settlement, it does not matter that the amount to be paid to Complainant's attorney will not be paid until later out of a separate settlement.

In addition, the response indicates that Complainant's counsel will ultimately be paid for the legal services rendered in this case based on a contingency fee agreement. *Id.* at 3. Counsel is to provide a memo to this Board setting forth the legal basis for approval of an attorney's fee based on a contingency agreement as opposed to the lodestar method in matters arising under the employee protection provisions of the Toxic Substances Control Act, 15 U.S.C. § 2622 (1988), the Water Pollution Control Act, 33 U.S.C. § 1367 (1988), the Clean Air Act, 42 U.S.C. § 7622 (1988) and the Solid Waste Disposal Act, 42 U.S.C. § 6971 (1988). *See Hensley v. Eckerhart*, 461 U.S. 424 (1983).

The parties are to respond as soon as possible, and in no event later than ten (10) days of the date of issuance of this Order, at which time the Board will act.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member