



In the Matter of:

**NORMAN E. PAWLOWSKI,**

**ARB CASE NO. 99-089**

**COMPLAINANT**

**ALJ CASE NO. 97-TSC-3**

**v.**

**DATE: September 15, 1999**

**HEWLETT-PACKARD COMPANY,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

Richard C. Busse, Jr., Esq., *Busse & Hunt, Portland, Oregon*

*For the Respondent:*

Lawrence S. Ebner, Esq., *McKenna & Cuneo, L.L.P., Washington, D.C.*

**ORDER DENYING MOTION TO DISMISS**

The Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) in this case on May 12, 1999, finding that complainant Norman Pawlowski established by a preponderance of the evidence that respondent Hewlett-Packard Company violated the whistleblower protection provisions of the Toxic Substances Control Act, 15 U.S.C. §2622 (1988) (TSCA), when it terminated Pawlowski's employment in retaliation for his long history of protected activity. The ALJ reissued the R. D. & O. on May 25, 1999, because the May 12th R. D. & O. "inadvertently contained an erroneous notice of the appellate procedure in this case" which "may have . . . misled [the parties]." May 25, 1999 Notice of Reissuance of Recommended Decision and Order.

Department of Labor regulations establishing procedures for the handling of discrimination complaints under TSCA and other environmental whistleblower laws provide that any party seeking review of an ALJ's recommended decision "shall file a petition for review with the Administrative Review Board . . ." 29 C.F.R. §24.8 (1998). The regulation also provides that "[t]o be effective, such a petition must be received within ten business days of the date of the recommended decision of the administrative law judge, and shall be served on all parties and on the Chief Administrative Law Judge." *Ibid.*

On May 21, 1999, within 10 business days of the ALJ's original decision, Hewlett-Packard filed a petition for review with the Administrative Review Board. Hewlett-Packard served the ALJ, the Assistant Secretary for Occupational Safety and Health, the Associate Solicitor for Fair Labor Standards, and Pawlowski's attorney. Hewlett-Packard states that the Department of Labor Chief Administrative Law Judge "was inadvertently omitted from the service list." Hewlett-Packard's Opposition to Complainant's Motion to Dismiss Petition for Review, p. 2. Pawlowski moved to dismiss the Petition for Review on June 1, 1999, on the grounds that it was not served on the Chief Administrative Law Judge within 10 business days of the date of the recommended decision. Hewlett-Packard hand-delivered a copy of its Petition for Review to the Chief Administrative Law Judge on June 4, 1999.

Pawlowski argues that, to be effective, the petition for review must be filed with the ARB within ten business days of the date of the recommended decision and served on the Chief Administrative Law Judge, that is, at the same time it was filed with the ARB. We do not agree. Taken in context, it is clear that the restrictive language of the regulation ("to be effective") applies only to the timely filing of the appeal "with the Administrative Review Board." 29 C.F.R. §24.8 (1998). While the regulation undoubtedly presumes that the petitioner would simultaneously serve the parties and the Chief Administrative Law Judge, the regulation by its terms does not so provide. Furthermore, Pawlowski has made no showing that he was prejudiced by Hewlett-Packard's failure to serve the Office of the Chief Administrative Law Judge within ten business days. *Cf., Jain v. Sacramento Municipal Utility District*, 89-ERA-39 (Sec'y Fin. Dec. & Ord. Nov. 21, 1991), slip op. at 5-6 (complainant's failure to comply with requirement in 29 C.F.R. §24.4(d)(a)(ii) that copies of a request for hearing must be sent to the respondent is not a sufficient basis for dismissal of the complaint where the respondent has not demonstrated prejudice).

Since Hewlett-Packard has met the requirements of 29 C.F.R. §24.8(a) (1998), it is not necessary for us to decide what effect, if any, the ALJ's reissuance of the R. D. & O. had on the time limit in that regulation and whether Hewlett-Packard timely served the Chief Administrative Law Judge under a new time limit running from the reissuance of the R. D. & O.

Accordingly, for the reasons discussed above, Pawlowski's motion to dismiss the Petition for Review is **DENIED**.

**SO ORDERED.**

**PAUL GREENBERG**  
Chair

**E. COOPER BROWN**  
Member

**CYNTHIA L. ATTWOOD**  
Member