



In the Matter of:

TOD N. ROCKEFELLER,

ARB CASE NO. 03-048

COMPLAINANT,

ALJ CASE NO. 2002-CAA-0005

v.

**U.S. DEPARTMENT OF ENERGY,
CARLSBAD AREA OFFICE,**

RESPONDENT,

and

TOD N. ROCKEFELLER,

ARB CASE NO. 03-084

COMPLAINANT,

ALJ CASE NO. 2003-ERA-10

v.

DATE: May 17, 2006

**U.S. DEPARTMENT OF ENERGY,
CARLSBAD AREA OFFICE,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Tod N. Rockefeller, pro se, Carlsbad, New Mexico

For the Respondent:

Elizabeth C. Rose, Esq., United States Department of Energy, Carlsbad, New Mexico

ORDER DENYING RECONSIDERATION

Tod N. Rockefeller filed the above-captioned whistleblower complaints with the United States Department of Labor alleging that the United States Department of Energy, Carlsbad Field Office (DOE), violated the employee protection provisions of the Clean Air Act, 42 U.S.C.A. § 7622 (West 1995) (CAA); the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A. § 9610 (West 1995) (CERCLA); the Solid Waste Disposal Act, 42 U.S.C.A. § 6971 (West 2003) (SWDA); and the Energy Reorganization Act of 1974, as amended, 42 U.S.C.A. § 5851 (West 2004) (ERA) (collectively, the whistleblower acts). DOE moved for summary judgment on both complaints. In both cases, United States Department of Labor Administrative Law Judges (ALJs) granted the summary judgment motions. Rockefeller appealed both rulings.

In 03-048, Rockefeller sought to relitigate some previously unsuccessful whistleblower claims against DOE. He also claimed that DOE blacklisted him. Summary judgment was appropriate because Rockefeller was collaterally estopped from relitigating the previous claims. As for the blacklisting claim, Rockefeller, in opposing the summary judgment motion, did not demonstrate that he had been blacklisted. Therefore, we dismissed 03-048. In 03-084, however, we reversed the ALJ's decision to grant summary judgment because Rockefeller had not been allowed an opportunity to respond to the summary judgment motion. Therefore, we remanded 03-084. *See Rockefeller v. United States Dep't of Energy, Carlsbad Area Office*, ARB Nos. 03-048, 03-084; ALJ Nos. 2002-CAA-5, 2003-ERA-10 (ARB Aug. 31, 2004). Thereafter, Rockefeller filed a "Motion for Reconsideration, Motion to Disclose Any Ex Parte Contacts, and Oral Argument," requesting that "the entire case be remanded to the ALJ." Motion for Reconsideration at 1.

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).

Rockefeller contends in his Motion for Reconsideration that, with respect to his complaint in ARB No. 03-048, we erred in concluding that (1) his claims were barred by collateral estoppel and (2) he failed to produce any evidence that DOE blacklisted him. Motion for Reconsideration at 2-10. But these contentions merely reiterate arguments Rockefeller made in his appeal to the Board and which we rejected. We therefore need not address those arguments again. *See, e.g., Chelladurai v. Core Consultants, Inc.*, ARB No. 02-110, ALJ No. 2002-LCA-10, slip op. at 2 (ARB Dec. 11, 2003). Furthermore,

Rockefeller's Motion does not describe any of the above-mentioned circumstances under which we will reconsider our rulings. Therefore, his request for reconsideration of 03-048 is denied.

We also deny Rockefeller's request for reconsideration of our ruling in ARB No. 03-084. As noted, we remanded that case because the ALJ erred in granting DOE's motion for summary decision before Rockefeller's opportunity to respond to the motion had expired. *See Rockefeller, supra*, at 7-8. On January 11, 2005, an ALJ issued a Recommended Decision and Order (R. D. & O.) recommending dismissal of the complaint that was the subject of ARB No. 03-084. Rockefeller did not appeal that ruling to this Board. The R. D. & O. therefore constitutes the final ruling on ARB No. 03-084. *See* 29 C.F.R. § 24.7(d). (2005).

For the reasons stated herein, we **DENY** Rockefeller's Motion for Reconsideration.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge