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Issue Date: 20 May 2005

THOMAS SAPORITO
Complainant

2005-CAA-00007

v.

GE MEDICAL SYSTEMS.
And
ADECCO TECHNICAL
Respondents

ORDER

RECOMMENDING APPROVAL OF SETTLEMENT AGREEMENT
AND
DISMISSAL OF COMPLAINT WITH PREJUDICE

This case comes on allegations of violations of the Clean Air Act ("CAA"), 42 U.S.C. § 7622, the Toxic Substances Control Act ("TCA"), 15 U.S.C. § 2622, the Comprehensive Environmental, Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9610, the Safe Drinking Water Act, 42 U.S.C.§ 300j-9(i), the Solid Waste Disposal Act, 42 U.S.C. § 6971, and the Energy Reorganization Act ("ERA"), 42 U.S.C. § 5851.

On May 16, 2005, Complainant Thomas Saporito ("Complainant") and Respondent GE Medical Systems and Respondent Adecco Technical (collectively "Respondents"), filed a Joint Motion for Approval of Settlement Agreement and for Order of Dismissal with Prejudice as to All Claims. I note that the parties recite that they contemporaneously filed a Joint Motion for Approval of Settlement Agreement and for Order of Dismissal with Prejudice as to All Claims Alleged Against Respondents in connection with Case Nos. 2003-CAA-00001 and 2003-CAA-00002, currently on review before the Administrative Review Board, ARB Case No. 05-009.

The Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges ("OALJ") provide for the disposition of cases through settlement. 29 C.F.R. § 18.9(d) provides that if the parties settle a proceeding and submit a settlement agreement to the ALJ for review, settlement should be accepted if I am satisfied with the form and substance of the agreement. My review of the settlement agreement is limited the case before me and to a determination of whether its terms are fair, adequate and reasonable. The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to the public interest.

The CAA, and TCA et. al., do not specify the criteria to be applied for a settlement agreement under those statutes. However, the statutory language in the CAA and TCA regarding settlement authority is the same as that found in the Energy Reorganization Act ("ERA"), 42 U.S.C. § 5851. The ERA provision prohibiting discrimination against employees who engage in whistleblower activity provides, in relevant part, that

> "[w]ithin 90 days of the receipt of [the whistleblower complaint] the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis

> of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed ... or denying the complaint.... The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant."

42 U.S.C. § 5851(b)(2)(A). Similar language is found in the CAA at 42 U.S.C. § 7622(b)(2)(A) and in the TCA at 15 U.S.C. § 2622(b)(2)(A). This language has been interpreted to require the Secretary to review a settlement agreement entered into between a complainant and respondent to ensure that the settlement agreement "adequately protects the public's interests and equitably treats the employee." ***Macktal v. Secretary of Labor***, 923 F.2d 1150, 1154 (5th Cir. 1991).

I note that Respondent GEMS includes the General Electric Company and all of its divisions, affiliates, subsidiaries and related entities, and all of their officers, directors, agents, employees, attorneys, successors and assigns. Adecco includes Adecco USA, Inc. d/b/a Adecco Technical and its parents, affiliates, subsidiaries, divisions, and related entities, and all of their officers, directors, agents, employees, attorneys, successors and assigns.

Although Mr. Saporito is not represented by counsel, after careful consideration of the settlement agreement, I find the terms of the agreement are fair, adequate, reasonable, and adequately protect Complainant as to this claim. I note that a global effect is encompassed in the agreement. However, I do not pass judgment on whether the agreement is viable as to all claims. *See* ***Saporito v. Arizona Public Service Co***., 92-ERA- 30, 93-ERA-26 and 93-ERA-43 (1994). It might have been less convenient but more appropriate to separate the terms as to the several claims, but I accept that because several jurisdictions may be involved, judicial economy may not be as important as the convenience to the parties and a resolution of multiple claims in more than one jurisdiction.

The agreement recites that Mr. Saporito entered into the release knowingly and voluntarily and understands that its terms are final and binding. I note that he has had several other cases before this Office and that he holds himself out as an expert in whistleblower matters. I accept the representation that he bargained voluntarily and with an understanding of the ramifications of settlement.

I assume accomplishment of a global settlement is a precondition to dismissal of this claim.

I further find that it is in the public interest to adopt the agreement as a basis for the administrative disposition of this case, and that a prompt resolution of all matters will promote the interests of justice and judicial economy.

In the motion to approve the settlement, the parties request that the settlement agreement remain confidential consistent with the Freedom of Information Act and the Privacy Act. The parties should note that the Administrative Review Board has repeatedly held with respect to confidentiality provisions in settlement agreements that the Freedom of Information Act, 5 U.S.C.A. §552, "requires agencies to disclose requested documents unless they are exempt from disclosure. . . ." ***Coffman v. Alyeska Pipeline Services Co. and Arctic Slope Inspection Services***, ARB Case No. 96-141; ALJ Case Nos. 1996-TSC-5 and 6 (ARB June 24, 1996), slip op. at 2-3. The ARB and the Secretary of Labor have held that records in whistleblower cases "are agency records which the agency must make available for public inspection and copying under the FOIA. In the event a member of the public requests the opportunity to inspect and copy the record of this case, the Department of Labor must respond to that request as provided in the FOIA. If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its

discretion to claim the exemption and withhold the document. If no exemption were applicable, the document would have to be disclosed." ***Seater v. Southern California Edison Co.***, 95-ERA-13 (ARB Mar. 27, 1997); ***Corder v. Bechtel Energy Corp.,*** 1988-ERA-9 (Sec'y Feb. 9, 1994).

After reviewing the terms of the settlement, I find the settlement agreement is a fair, adequate, and reasonable settlement of the complaint before me. I also find that it adequately protects the public interest. Pursuant to 29 CFR §18.9, there is no reason to reject the requests, and therefore a dismissal with prejudice is recommended.

RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Joint Motion for Approval of Settlement Agreement and for Order of Dismissal with Prejudice as to All Claims is ***APPROVED*** with respect to the claim designated 2005-CAA-00007, and that claim is ***DISMISSED***.

A

DANIEL F. SOLOMON
Administrative Law Judge

Washington, D.C.

This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Such a petition for review must be received by the Administrative Review Board within ten (10) business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the