



In the Matter of:

WILLIAM C. EIFF,

ARB CASE NO. 97-022

COMPLAINANT,

ALJ CASE NO. 96-ERA-42

v.

DATE: Oct. 3, 1997

ENERGY OPERATIONS, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

This case arises under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. §5851 (1988 and Supp. V 1993). Complainant, William C. Eiff, alleges that Respondent, Entergy Operations, Inc. (Entergy), violated the ERA when it eliminated his position and reclassified him as a Senior Engineer, which allegedly will limit the amount of bonuses available to him. In a Recommended Decision and Order (R. D. and O.), the Administrative Law Judge (ALJ) recommended that the complaint be denied because "there is no evidence to support an allegation that any of the actions by the Respondent were motivated by or as a result of an intent to discriminate or retaliate against Complainant for having engaged in alleged protected activities." R. D. and O. at 9.

We accept the ALJ's recommended decision. With the exception of one finding discussed below, we adopt the attached R. D. and O.^{1/}

The ALJ found that Eiff failed to make out a *prima facie* case of discriminatory treatment. Where, as here, the respondent has introduced evidence to rebut a *prima facie* case of a violation of the ERA's employee protection provision, it is unnecessary to examine the question of whether the complainant established a *prima facie* case. *Carroll v. Bechtel Power Corp.*, Case No. 91-ERA-0046, Sec. Final Dec. and Ord., Feb. 15, 1995, slip op. at 11 and n.9, *aff'd sub nom. Carroll v. United States Dept. of Labor*, 78 F.3d 352 (8th Cir. 1996). Accordingly, we make no finding on whether Eiff established a *prima facie* case.

^{1/} We appreciate the ALJ's questioning of Eiff, who appeared *pro se*.

We affirm the ALJ's ultimate conclusion that Eiff did not establish that his protected activity was a contributing factor in the unfavorable personnel actions Entergy took with respect to him. Accordingly, we **DISMISS** the complaint.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member

JOYCE D. MILLER

Alternate Member