



In the Matter of:

**THOMAS M. BONANNO,**

**ARB CASE NOS. 96-110, 165**

**COMPLAINANT,**

**ALJ CASE NOS. 95-ERA-54  
96-ERA-7**

**v.**

**STONE & WEBSTER  
ENGINEERING CORP.,**

**DATE: December 12, 1996**

**AND**

**NORTHEAST UTILITIES d/b/a  
NORTHEAST NUCLEAR ENERGY CO.  
ARB 96-165/96-ERA-7, only)**

**RESPONDENTS.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD<sup>1/</sup>

**ORDER OF CONSOLIDATION  
AND FINAL ORDER OF DISMISSAL**

These cases arise under the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851 (1988 and Supp. IV 1992). In light of the common evidence and issues presented, and in the interest of administrative economy, these cases are hereby CONSOLIDATED for the purpose of decision. *See* Fed. R. Civ. P. 42(a), as made applicable by 29 C.F.R. § 18.1(a) (1996) and Fed. R. App. P. 3(b).

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<sup>1/</sup> On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996). Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Administrative Review Board now issues final agency decisions. Final procedural revisions to the regulations implementing this reorganization were also promulgated on that date. 61 Fed. Reg. 19982.

On April 25, 1996 Administrative Law Judge (ALJ) Frank D. Marden issued a Recommended Decision and Order Dismissing Complaint (R. D. O. D.) in 95-ERA-54. On July 12, 1996 ALJ Jeffrey Tureck issued a Recommended Decision and Order (R.D. and O.) of dismissal in 96-ERA-7. Complainant Thomas M. Bonanno (Bonanno) alleges in each of these complaints that his protected activity in 1992 proximately caused retaliatory action against him in the spring of 1995 (95-ERA-54) and again in December of 1995 (96-ERA-7). Each of the ALJs found, in part, that Bonanno failed to show that his 1992 protected activity played any role in the alleged adverse actions. We agree and therefore, dismiss the complaints.

All of Bonanno's allegations relate to his work at Northeast Utilities' Millstone Station (Millstone) nuclear power plant. The only alleged protected activity in either of these cases involves a 1992 safety complaint to the NRC filed by Bonanno. Clearly, Bonanno engaged in protected activity in 1992 when he filed this complaint. Just as clearly the filing of that complaint in 1992 played no role in the alleged adverse actions occurring in 1995.

In 95-ERA-54 Bonanno claims that Stone & Webster Engineering, a subcontractor at the Millstone plant, took adverse action against him by not paying him while attending a training course and by not immediately hiring him after the completion of that course. Further, in 96-ERA-7 Bonanno claims that Respondents took adverse action against him by laying him off in violation of the applicable affirmative action policy for Vietnam-era veterans. These alleged acts of discrimination in the spring and December of 1995 are claimed by Bonanno to have been caused by retaliatory animus stemming from his 1992 protected activity. Bonanno presents no evidence to support his claim that the 1992 protected activity caused the 1995 alleged adverse actions. R. D. O. D. at 6 and R. D. and O. at 3.

In *Shusterman v. EBASCO Services, Inc.*, Case No. 87-ERA-27, Sec. Dec. and Order, Jan. 6, 1992, slip op. at 8-9, *aff'd mem.*, *Shusterman v. Secretary of Labor*, No. 92-4029 (2d Cir. Sept. 24, 1992), the Secretary held that a "four-year interval, without credible evidence to the contrary, establishes the absence of any causal connection between [the protected activity and the adverse action]." In this case, the passage of three years, with evidence of a lack of animus

on the part of the Respondents after the protected activity<sup>2/</sup>, convinces us that there is no causal connection between the protected activity and the alleged adverse actions.

Accordingly, these consolidated cases are DISMISSED.

**SO ORDERED.**

**DAVID A. O'BRIEN**

Chair

**KARL J. SANDSTROM**

Member

**JOYCE D. MILLER**

Alternate Member

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<sup>2/</sup> Subsequent to the filing of the complaint with the NRC in 1992, Bonanno was hired to work at the Millstone plant on five different occasions: from April to approximately December 1992; from July, 1993 to October 1993; from January to May, 1994; from April 3 to June 2, 1995; and from October 23 to December 7, 1995. R. D. and O. at 2; *See Lastre v. Veterans Administration, Lakeside Hospital*, Case No. 89-TSC-1, Sec. Dec. and Ord., Aug. 21, 1990, slip op. at 5 (under the ERA, even though the assigned case number indicates otherwise, post-protected activity receipt of an “outstanding” performance rating and a cash award evinces a lack of discriminatory animus on the part of the employer).