



In the Matter of:

DAVID MARSHALL HIGH,

ARB CASE NO. 02-091

COMPLAINANT,

ALJ CASE NO. 02-CAA-1

v.

DATE: November 24, 2003

LOCKHEED MARTIN ENERGY SYSTEMS, INC.;
LOCKHEED MARTIN CORPORATION;
OAK RIDGE OPERATIONS OFFICE; and
U.S. DEPARTMENT OF ENERGY,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Edward A. Slavin, Esq., St. Augustine, Florida

For the Respondent:

Charles W. Van Beke, Esq., Wagner, Myers & Sanger P.C., Knoxville, Tennessee

Kenneth M. Brown, Esq., Oak Ridge, Tennessee

FINAL DECISION AND ORDER

This case arises under the employee protection provision of the Clean Air Act, 42 U.S.C. § 7622 (2000) (CAA). On October 9, 2001, David Marshall High filed a complaint requesting that the Occupational Safety and Health Administration (OSHA) investigate the disappearance of the record in a previous whistleblower claim (*High v. Lockheed Martin Energy Systems, Inc.*, ARB No. 98-075, ALJ No. 1996-CAA-8). The record was lost in transmission from the Administrative Review Board (the Board) to the Office of Administrative Law Judges (OALJ) after the Board remanded the case for further proceedings.¹ High contended that the Board was

¹ We note that the record in 1996-CAA-8 has been re-created. See *High v. Lockheed Martin Energy Systems, Inc.*, 1996-CAA-8 (ALJ Nov. 27, 2002).

responsible for the loss. On October 22, 2001, OSHA determined that it had no authority to investigate the Board. High appealed that determination to the OALJ.

On May 13, 2002, an Administrative Law Judge (ALJ) issued an Order to Show Cause ordering High to state why his complaint should not be dismissed for lack of jurisdiction. High responded to the order but his response did not address the jurisdictional issue raised in the show cause order. On June 26, 2002, the ALJ issued a Recommended Decision and Order (R. D. & O.) recommending dismissal of High's complaint because he failed to allege any basis for ordering an investigation of the Board by OSHA.

On July 1, 2002, High submitted to the Board a Petition for Review and Request for Expedited Appeal, requesting review of the ALJ's R. D. & O.² In response, on July 24, 2002, Respondent Lockheed Martin Energy Systems submitted a document entitled "Respondent's Suggestion That Complainant's Petition for Review and Request For Expedited Appeal Be Denied."

On July 16, 2002, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule instructing High to file an initial brief in support of his Petition for Review on or before August 14, 2002. High has not submitted a brief to the Board, and his Petition for Review does not indicate how the ALJ erred by determining that he failed to state how OSHA could initiate an investigation of the ARB pursuant to the CAA. We therefore **AFFIRM** the R. D. & O. and **DISMISS** the complaint.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

² The Petition for Review also requests review of the May 13, 2002 Order to Show Cause, as well as review of the ALJ's "reversal of his November 16, 2001 and January 17, 2002 remand orders to OSHA." Because of the disposition of the case it is not necessary to address these matters.