

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 02 November 2006**

**Case No: 2006-ERA-33**

**In the Matter of:**

**Janet Conner,**

**Complainant,**

**v.**

**Pinkerton Government Services, Inc.  
and Securitas Security Services USA, Inc.**

**Respondents**

**RECOMMENDED ORDER APPROVING  
REQUEST FOR DISMISSAL**

This proceeding arises under the Energy Reorganization Act of 1974 ("ERA"), 42 U.S.C. §§ 5801-5891 and the regulations promulgated thereunder at 29 C.F.R. Part 24 which are employee protection provisions of the ERA or of the Atomic Energy Act of 1954 as amended, 42 U.S.C. §§ 2011, *et seq.* The Complainant requested a hearing based upon the Secretary's August 9, 2006 determination regarding the Complainant's allegations of discrimination in violation of the employee protection provisions of the ERA. The matter was docketed in this office on August 15, 2006.

On October 27, 2006, the Complainant filed her Motion to Dismiss Without Prejudice, citing to the August 8, 2005 amendment to Section 211 of the Energy Reorganization Act, which provides as follows:

If the Secretary has not issued a final decision within 1 year after the filing of a complaint under paragraph (1), and there is no showing that such delay is due to the bad faith of the person seeking relief under this paragraph, such person may bring an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

The Complainant moved to dismiss her Section 211 claim without prejudice so that she could pursue her Section 211 claim, along with claims under state law, in Federal court in a single proceeding. The Respondents do not oppose the Complainant's request for dismissal.

Voluntary dismissal of ERA whistleblower complaints is covered by Rule 41 of the Federal Rules of Civil Procedure. *Rainey v. Wayne State University*, 1990 ERA 40 (Sec’y Feb. 27, 1991). Rule 41 applies because there are no procedures for voluntary dismissals in either the ERA, the implementing regulations at 29 C.F.R. Part 24, or the regulations at 29 C.F.R. Part 18. Pursuant to 29 C.F.R. § 24.6, the disposition of complaints, including Rule 41(a)(1)(i) dismissals, can be effected only by final order of the Secretary.

Accordingly, as it is clear that the Complainant no longer wishes to proceed with this matter in this forum, it is recommended that the Complainant’s request for voluntary dismissal be granted and this case be dismissed without prejudice.

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LINDA S. CHAPMAN  
Administrative Law Judge

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review (“Petition”) that is received by the Administrative Review Board (“Board”) within ten (10) business days of the date of issuance of the Administrative Law Judge’s Recommended Decision and Order. The Board’s address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file your Petition with the Board, you must serve it on all parties to the case as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001. *See* 29 C.F.R. § 24.8(a). You must also serve copies of the Petition and briefs on the Assistant Secretary, Occupational Safety and Health Administration, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 2021-/

If no Petition is timely filed, the Administrative Law Judge’s recommended decision becomes