



**In the Matter of:**

**JOHNNY F. NEAL,**

**COMPLAINANT,**

**v.**

**ENTERGY NUCLEAR OPERATIONS,  
INC.,**

**RESPONDENT.**

**ARB CASE NOS. 06-84  
06-86**

**ALJ CASE NO. 2006-ERA-3**

**DATE: July 26, 2006**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**FINAL DECISION AND ORDER DISMISSING APPEALS**

On April 5, 2006, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Order Denying Complainant’s Motion for Summary Decision and Granting in Part Respondent’s Motion for Summary Decision (R. O.) in this case arising under the Energy Reorganization Act (ERA).<sup>1</sup> This R. O. included the following “Notice of Appeal Rights:”

To appeal, you must file a Petition for Review . . . that is received by the Administrative Review Board . . . within ten (10) business days of the date of issuance of the administrative law judge’s Recommended Decision and Order. . . . If no Petition is timely filed, the administrative law judge’s recommended decision becomes the final order of the Secretary of Labor. *See* 29 C.F.R. § 24.7(d).<sup>2</sup>

<sup>1</sup> 42 U.S.C.A. § 5851 (West 2003). Regulations implementing the whistleblower protection section of the ERA are found at 29 C.F.R. Part 24 (2005).

<sup>2</sup> R. D. & O. at 11. The Secretary of Labor has delegated her authority to issue final administrative decisions in cases arising under ERA to the Administrative Review Board.

Johnny Neal, the Complainant, and Entergy Nuclear Operations, the Respondent, filed timely petitions for review in compliance with the ALJ's instructions. On April 20, 2006, the ALJ issued an Errata stating:

On April 5, 2006 a Recommended Order Denying Complainant's Motion for Summary Decision and Granting in Part Respondent's Motion for Summary Decision was issued by the undersigned. Inclusion of the Notice of Appeal Rights at the end of the Order was erroneous as the Order did not resolve all aspects of the claim and it was not intended to be a final order.

In response to the parties' appeals, the Administrative Review Board issued an Order to Show Cause stating:

Because the ALJ has not fully resolved the merits of Neal's complaint, she has correctly determined that she has not issued a final order.<sup>3</sup> Any appeal from such an order would be interlocutory. The Secretary and the Board have held many times that interlocutory appeals are generally disfavored, and that there is a strong policy against piecemeal appeals.<sup>4</sup>

Accordingly, the Board ordered the parties to show cause on or before July 14, 2006, why the Board should not dismiss their interlocutory appeals. On July 14, 2006, the Complainant responded to the Board's Order stating that he did not "wish to oppose the Review Board's decision to return this matter to the Administrative Law Judge's jurisdiction." On July 17, 2006, the Respondent replied that it "has no objection to the

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Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002). The Secretary's delegation of authority to the Board includes, "discretionary authority to review interlocutory rulings in exceptional circumstances, provided such review is not prohibited by statute." *Id.* at 64,273.

<sup>3</sup> See *Walsh v. Resource Consultants, Inc.*, ARB No. 05-123, ALJ No. 2004-TSC-00001 (ARB Aug. 10, 2005).

<sup>4</sup> See e.g., *United States Dep't of Labor, OFCCP v. Bank of America*, ARB No. 04-169, ALJ No. 97-OFC-16 (ARB Dec. 17, 2004); *Hasan v. Commonwealth Edison Co.*, ARB No. 99-097; ALJ No. 99-ERA-17 (ARB Sept. 16, 1999); *Carter v. B & W Nuclear Technologies, Inc.*, ALJ No. 94-ERA-13 (Sec'y Sept. 28, 1994).

dismissal of the appeals at this time by the Administrative Review Board.” Therefore, we **DISMISS** the Complainant’s and the Respondent’s interlocutory appeals and remand this case to the Administrative Law Judge.

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**