



In the Matter of:

GREGG BECKER,

COMPLAINANT,

v.

COMMUNITY HEALTH SYSTEMS,  
INC., and ROCKWOOD CLINICS,  
P.S.,

RESPONDENTS.

ARB CASE NOS. 2017-0005  
2017-0006

ALJ CASE NO. 2014-SOX-00044

DATE: March 30, 2020

Appearances:

*For the Complainant:*

Mary Schultz, Esq.; *Mary Schultz Law, P.S.*; Spangle, Washington

*For the Respondents:*

Anthony Todaro, Esq., and Joseph Davison, Esq.; *DLA Piper LLP*;  
Seattle, Washington

*For the Solicitor of Labor as Amicus Curiae:*

Kate S. O'Scannlain, Esq., Jennifer S. Brand, Esq., Sarah K. Marcus,  
Esq., Megan E. Guenther, Esq., and Dean A. Romhilt, Esq.; *United  
States Department of Labor*; Washington, District of Columbia

Before: Thomas H. Burrell, *Acting Chief Administrative Appeals Judge*,  
*and James A. Haynes, Heather C. Leslie, and James D. McGinley,*  
*Administrative Appeals Judges*, presiding en banc.

DECISION AND ORDER APPROVING SETTLEMENT

## AND DISMISSING COMPLAINT WITH PREJUDICE

PER CURIAM. Complainant, Gregg Becker, filed a complaint under the whistleblower protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act (SOX), as amended,<sup>1</sup> and its implementing regulations,<sup>2</sup> against Respondents, Community Health Systems, Inc. and Rockwood Clinics, P.S. On November 9, 2016, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) holding that Respondents violated SOX when they constructively discharged, circumvented, and threatened and harassed Complainant because Complainant engaged in whistleblower protected activity.

Respondents filed a petition for review with the Administrative Review Board (ARB or the Board) appealing the D. & O. on the merits (ARB No. 17-005). Complainant also filed a petition for review with the ARB appealing the ALJ's award of compensatory damages (ARB No. 17-006). The parties filed briefs in support of and in opposition to the appeals. Respondents also filed a supplemental brief presenting a constitutional challenge to the ALJ's authority to hear and decide the case under the Appointments Clause of the United States Constitution. Complainant and the Solicitor of Labor, as amicus curiae, filed briefs in response to Respondents' constitutional challenge. The case was selected for en banc review.

On March 24, 2020, while the appeals were pending before the ARB, the parties filed a document styled "Joint Request for ARB Settlement Approval" informing the ARB that the parties reached a settlement of their case. The SOX implementing regulations provide that the parties may enter into an adjudicatory settlement of a SOX complaint.<sup>3</sup> The parties must submit a copy of their settlement agreement to the ARB, and a settlement under SOX cannot become effective until its terms have been reviewed and determined to be fair, adequate, reasonable, and

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<sup>1</sup> 18 U.S.C. § 1514A (2010).

<sup>2</sup> 29 C.F.R. Part 1980 (2018)

<sup>3</sup> 29 C.F.R. § 1980.111(d)(2).

in the public interest.<sup>4</sup> Because Complainant and Respondents have jointly submitted the settlement as required and no party has indicated any opposition to its terms, we deem the terms of the parties' Settlement Agreement unopposed and will review it in accordance with the applicable regulations.

Review of the Settlement Agreement reveals that it includes the settlement of matters under laws in addition to SOX.<sup>5</sup> The ARB's authority over settlement agreements is limited to claims brought under the statutes that are within the ARB's jurisdiction and pending before the Board.<sup>6</sup> Thus, our approval is limited to this case, and we approve the agreement only insofar as it pertains to Complainant's SOX claim in ARB Nos. 17-005 and 17-006 (ALJ No. 2014-SOX-00044), the case currently before the ARB.<sup>7</sup>

Additionally, the Settlement Agreement contains confidentiality and non-disparagement clauses.<sup>8</sup> The ARB notes that the parties' submissions, including the Settlement Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA).<sup>9</sup> FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act.<sup>10</sup> Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.<sup>11</sup>

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<sup>4</sup> *Id.*; *Johnson v. U.S. Bancorp/U.S. Bank Nat'l Assoc.*, ARB Nos. 2013-0014, -0046, ALJ No. 2010-SOX-00037, slip op. at 2-3 (ARB July 22, 2013); *Carciero v. Sodexo Alliance, S.A.*, ARB No. 2009-0067, ALJ No. 2008-SOX-00012, slip op. at 2 (ARB Sept. 30, 2010).

<sup>5</sup> Settlement and Release Agreement (Settlement Agreement), ¶ A, ¶ I.

<sup>6</sup> *Johnson*, ARB No. 13-0014, slip op. at 3; *Cunningham v. Livedeal, Inc.*, ARB No. 2011-0047, ALJ No. 2011-SOX-00004, slip op. at 2 (ARB Aug. 5, 2011).

<sup>7</sup> *See Cunningham*, ARB No. 11-0047, slip op. at 2.

<sup>8</sup> Settlement Agreement, ¶ M.

<sup>9</sup> 5 U.S.C. § 552 (2016).

<sup>10</sup> *Hiller v. Grand Trunk W. Ry. Co.*, ARB No. 2020-0010, ALJ No. 2018-FRS-00088, slip op. at 3 (ARB Feb. 26, 2020); *Anderson v. Schering Corp.*, ARB No. 2010-0070, ALJ No. 2010-SOX-00007, slip op. at 2 (ARB Jan. 31, 2011).

<sup>11</sup> 29 C.F.R. §70 *et seq.* (2017).

Furthermore, if the confidentiality and non-disparagement clauses were interpreted to preclude Complainant from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore constitute unacceptable “gag” provisions.<sup>12</sup> The Settlement Agreement provides Complainant is excused from the confidentiality obligations “as may be required by law or by an enforceable judicial or administrative subpoena.”<sup>13</sup> The Settlement Agreement also provides that the confidentiality obligations do not prevent Complainant “from communicating or cooperating with governmental agencies in any investigations conducted by such agencies . . . .”<sup>14</sup> We construe such language as allowing Complainant, either voluntarily or pursuant to an order or subpoena, to communicate with, or provide information to, state and federal authorities about suspected violations of law involving Respondents.<sup>15</sup>

The Settlement Agreement also provides that it shall be governed by the laws of State of Washington.<sup>16</sup> We construe this “choice of law” provision as not limiting the authority of the Secretary of Labor, the ARB, and any federal court with regard to any issue arising under SOX, which authority shall be governed in all respects by the laws and regulations of the United States.<sup>17</sup>

The parties have agreed that the Settlement Agreement “settle[s] any and all claims, asserted or unasserted, [Complainant] may have against [Respondents]”<sup>18</sup> and have agreed that the terms of the Settlement Agreement “represent a fair and reasonable resolution of disputed claims.”<sup>19</sup> The ARB finds that the settlement

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<sup>12</sup> *Johnson*, ARB No. 13-0014, slip op. at 3; *Anderson*, ARB No. 10-0070, slip op. at 3.

<sup>13</sup> Settlement Agreement, ¶ M.

<sup>14</sup> *Id.*

<sup>15</sup> *See Pawlowski v. Hewlett-Packard Co.*, ARB No. 1999-0089, ALJ No. 1997-TSC-00003, slip op. at 2 (ARB May 5, 2000).

<sup>16</sup> Settlement Agreement, ¶ Q.

<sup>17</sup> *Hildebrand v. H.H. Williams Trucking, LLC*, ARB No. 2011-0030, ALJ No. 2010-STA-00056, slip op. at 3 (ARB Sept. 26, 2011); *Cunningham*, ARB No. 11-0047, slip op. at 3.

<sup>18</sup> Settlement Agreement, ¶ E.

<sup>19</sup> *Id.* at ¶ P.

between Complainant and Respondents is fair, adequate, and reasonable, and does not contravene the public interest. Accordingly, with the exceptions set out above, we **APPROVE** the Settlement Agreement and **DISMISS** the complaint with prejudice.

**SO ORDERED.**