In the Matter of:

VERNON R. BELT,

COMPLAINANT,

v.

UNITED STATES ENRICHMENT CORPORATION,

RESPONDENT.

ARB CASE NO. 02-117

ALJ CASE NO. 01-ERA-19

DATE: June 25, 2004

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:
John Frith Stewart, Esq., Jeffrey C. Trapp, Esq., *Segal, Stewart, Cutler, Lindsay, Janes & Berry, Louisville, Kentucky*

For the Respondent:
Mark C. Whitlow, Esq., *Whitlow, Roberts, Houston & Straub, PLLC,* and David Thompson, Esq., *United States Enrichment Corporation, Paducah, Kentucky*

ORDER DENYING MOTION FOR RELIEF FROM ORDER DISMISSING COMPLAINT

On February 26, 2004, the Administrative Review Board (ARB or the Board) issued a Final Decision and Order (F. D. & O.) in this case arising under the Energy Reorganization Act (ERA), 42 U.S.C.A. § 5851 (West 1995). In the F. D. & O., the Board concluded that Vernon R. Belt's complaint against his former employer, United States Enrichment Corporation (USEC), was untimely filed. Therefore, the Board dismissed the complaint.

On March 29, 2004, Belt filed "Complainant's Motion for Relief from Order Dismissing Complaint." In support of his Motion, Belt submitted a 10-page memorandum and 119 pages of a hearing transcript in the case of *Charlotte Wells v. United States Enrichment Corp.*, ALJ No. 01-ERA-45, dated March 13, 2002. Belt asked

the ARB to vacate its F. D. & O., pursuant to FED. R. CIV. P. 59(b), on the grounds of (1) misrepresentation by USEC, (2) newly discovered evidence, and (3) "other reasons justifying relief."

The ARB has authority to reconsider its decisions concerning the ERA. *See Macktal v. Brown and Root, Inc*., ARB Nos. 98-112, 98-112A, ALJ No. 86-ERA-23, Order Granting Reconsideration (ARB Nov. 20, 1998). As we said in *Macktal*,

> The ERA is directed generally to the development and safe utilization of energy resources and places. Nothing in the statutory text of the employee protection provision or elsewhere in the ERA addresses the issue of reconsideration of final orders . . . . Therefore, unless reconsideration by the Board would interfere with, delay or otherwise adversely affect accomplishment of the Act's safety purposes and goals, the Board has inherent authority to reconsider a final ERA order.

Macktal, slip op. at 3-5 (citations and footnotes omitted). In the present case, reconsideration would not interfere with, delay, or otherwise affect the fulfillment of the ERA's safety purposes and goals. *Id*.

Nevertheless, upon reconsideration, we must deny Belt's request for relief. The essence of Belt's motion is that the ALJ erred in specifically finding a USEC manager, Patricia Jenny, to be a credible witness. Belt argues that her testimony in the *Wells* case shows that she was "not completely forthcoming" and misled Belt about his prospects for future work at USEC, which led him to volunteer for the reduction in force (RIF).

After review, we are not persuaded that Jenny's testimony in the *Wells* case misrepresents facts or constitutes newly discovered evidence. In *Wells*, Jenny stated that Belt did some fire protection control work before he was riffed and that she needed someone in that area after he was gone. Exhibit 1, TR at 299. In *Belt*, Jenny testified credibly that although Belt's title was being eliminated, the work still needed to be done. *Belt v. United States Enrichment Corp.*, ARB Case No. 02-117, ALJ No. 01-ERA-19, slip op. at 6 n.6 (ARB Feb. 26, 2004). Jenny's statements in the *Wells* case are consistent with this testimony.

Belt claims that the ARB also overlooked evidence that USEC employees being involuntarily riffed were subject to recall or rehire. He argues that this evidence indicates that he filed a timely complaint. We disagree. In our F. D. & O., we quoted the memorandum Belt signed. Its terms left no room for his recall or revocation of the document he signed. *Id.*, slip op. at 6-7.

Finally, Belt argues that USEC never officially notified him of his discharge since he volunteered for the RIF because Jenny failed to tell him that he would still have a job after the reorganization. We reject this and similar arguments in Belt's motion as irrelevant and unpersuasive. *See, e.g., Belt,* slip op. at 6 n.6.

Accordingly, we deny Belt's motion for relief from our February 26, 2004 dismissal of his case.[1]

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

[1] After filing his motion for relief and before USEC could file a response, Belt appealed the ARB's decision to the United States Court of Appeals for the Sixth Circuit. Granting a motion filed by DOL's Solicitor of Labor, that court suspended its briefing schedule so that the ARB could address Belt's pending motion. In responding to the Solicitor's request that briefing be suspended, USEC did not object but requested that it be permitted to file a response to Belt's Motion for Relief. In view of our disposition of Belt's motion, a USEC response is unnecessary.