

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE

Robert W. Whitmore,

Appellant,

vs.

U.S. Department of Labor,

Agency.

Docket No.: DC-0752-09-0890-M-1

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is hereby entered into by and between Appellant Robert Wade Whitmore ("Appellant") and the Department of Labor ("DOL" or "Agency").

Appellant and DOL have agreed to resolve the issues raised in the above-referenced administrative action amicably and without need of further litigation. Therefore, in consideration of mutual promises and undertakings hereinafter contained, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Appellant's Undertakings: Appellant hereby agrees to take the following actions:
 - a. Appellant agrees that this is a global settlement. Upon the execution of this Agreement, Appellant agrees to the dismissal of the above-referenced action with prejudice. Appellant further agrees that this Agreement automatically operates as the withdrawal, with prejudice, and/or waiver of any and all other grievances, EEO complaints (formal and informal), claims under other administrative procedures, appeals or lawsuits against the Department of Labor, and/or against any of the DOL's current or former employees that have been raised or that

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could have been raised arising out of Appellant's employment with DOL.

b. Appellant agrees that he will not apply for any employment position with DOL, including any and all DOL agencies, for fifteen years following the signing of this Agreement. Appellant understands and agrees that if he applies for any position with DOL during that time period, he will be deemed automatically ineligible for such position.

c. Appellant, on his own behalf and on behalf of his heirs, executors, administrators, successors and assigns, hereby irrevocably and unconditionally releases, waives and forever discharges the Department of Labor, and their respective employees and agents, from any and all claims regarding the allegations that form the basis of the above-captioned administrative action as well as from any and all claims regarding the treatment he alleges that he received (both acts and omissions) during his employment with the Department of Labor through the effective date of this Agreement. This waiver and release includes without limitation any rights the Appellant may have had under the 5 U.S.C. § 7701 *et. seq.* and any other state or federal law, rule or regulation, with respect to any act or omission associated with his employment with DOL arising prior to the date of the execution of this Agreement.

2. DOL's Undertakings: DOL hereby agrees to take the following action:

Within 60 days of the signing of this agreement, DOL shall pay Appellant a total lump sum of \$820,000 (Eight Hundred Twenty Thousand Dollars and No Cents), without deduction, withholding or off-set, in full settlement of this matter. The parties agree that this amount represents recovery for all claims Appellant has brought or could have brought, including, but not limited to, claims for equitable or legal relief, damages, attorney's fees and costs. Payment shall be made to the client trust account of Robert C. Seldon & Associates, P.C. If payment is to be made by wire transfer, counsel for the agency will be provided with wire instructions on or

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before the Board's approval of this agreement. If payment is to be made by check, it shall be mailed or delivered to Robert C. Seldon, Esq., 1319 F Street, NW, Suite 200, Washington, D.C. 20004. The Agency shall not make any withholdings from this amount and will issue IRS Form 1099 to both Appellant and the counsel receiving the lump sum payment for the full amount. Appellant and Appellant's counsel shall be responsible for any taxes or withholdings that may be due from this amount and shall indemnify and hold harmless the Agency from any and all liability and/or expense arising from their treatment of this payment for tax purposes.

3. No Admission of Wrongdoing – Nothing in this Agreement shall be construed as an admission of any violation of law, rule or regulation, or of any wrongdoing whatsoever by Appellant, DOL or any employee of DOL.

4. This Agreement may be signed in one or more counterparts, in original or digital form or by facsimile. Upon signature by all parties in such forms, this Agreement will be taken as fully executed and may be filed with the Board.

Agreement Constitutes Full Understanding

The Parties hereto acknowledge that this Agreement sets forth their full and complete understanding with regard to the resolution of the above-captioned action and the claims raised therein. By executing this Agreement, the Parties further acknowledge that they each understand its terms; that such terms are acceptable to each; that there are no additional obligations, either written or oral, to be performed by any Party beyond those set forth herein; that such terms are final and binding as to all claims that have been brought or could have been advanced on behalf of Appellant against the DOL; and that the terms of this Agreement will not establish any precedent, nor will this Agreement be used as a basis to seek or justify similar terms in any other case. The terms of this Agreement may not be altered, amended, changed, supplemented or

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modified in any manner or degree except by a written instrument signed by each of the parties hereto.

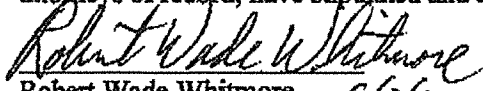
Good Faith Attempt to Resolve Breach

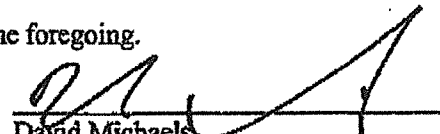
Each party agrees to make a good faith attempt to resolve any dispute arising from or regarding this settlement agreement prior to bringing it to the MSPB's attention. Should either party at any time believe that the other party is in breach of this settlement agreement, prior to bringing the matter to the MSPB's attention, that party shall notify the other party in writing of the particular section of this settlement agreement that has allegedly been breached and the action(s) that constitute the breach. The other party shall then have thirty (30) days, or such other longer period as the parties may agree upon in writing, to respond to such claims prior to the injured party's bringing the alleged breach to the attention of the Board. This Agreement may be used as evidence only in a later proceeding in which either party alleges a breach of the Agreement. The parties agree that this settlement shall be provided to the MSPB for incorporation into its record for purposes of enforcement and that once the Agreement has been accepted in the Board record for enforcement purposes, the Board may dismiss the appeal as settled.

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WHEREFORE, the parties hereto, intending to be legally bound, through their respective


attorneys of record, have stipulated and agreed to the foregoing.

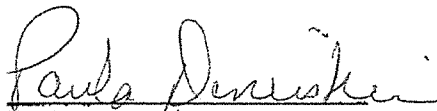

Robert Wade Whitmore 6/3/13
Appellant


David Michaels
Assistant Secretary
Occupational Safety and Health
Administration
U.S. Department of Labor



Robert C. Seldon
Robert C. Seldon & Associates


James V. Blair 6/3/13
Office of the Solicitor
U.S. Department of Labor


Paula Dinerstein
Public Employees for Environmental Responsibility

Attorney for Agency

Attorneys for Appellant