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In the Matter of:

ADRIANA KOECK,

ARB CASE NO. 08-068

COMPLAINANT,

ALJ CASE NO. 2007-SOX-073

v.

DATE: JUN 17 2008

**GENERAL ELECTRIC CONSUMER
& INDUSTRIAL, RAYMOND BURSE,
EARL JONES,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER

The Administrative Review Board has received a letter on behalf of the Respondents "concerning the complaint and other filings made by Adriana Koeck [the complainant] with the U.S. Department of Labor with respect to her claim under Section 806 of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A." The Respondents have requested "that this matter and all of the filings made by the parties with respect to it should be held in the strictest confidence." Further the Respondents state, "as previously requested in this matter, the parties' filings and other submissions should be sealed as confidential and should not be subject to any Freedom of Information Act ("FOIA") requests for information." Finally, the Respondents requested, "[p]lease provide written confirmation that the parties' filings and other submissions will be sealed as confidential and not subject to any FOIA requests for information."

The Board issued a Notice of Appeal and Order Establishing Briefing Schedule in this case on April 9, 2008. In this Notice, the Board stated, "**All motions and other requests for extraordinary action by the Board . . . shall be in the form of a motion**" The Respondents' letter does not comply with the Board's instruction. Furthermore, we note that the Respondents have failed to address the Board's precedent on this issue.¹ Accordingly we cannot comply with the Respondents' request to confirm

¹ The Board and the Secretary of Labor have routinely held that that there is no authority permitting the sealing of a record in a whistleblower case because the case file is a government record subject to disclosure pursuant to the Freedom of Information Act, *see e.g.*,

that the filings and other submissions will be sealed and not subject to any FOIA requests.

Should the Respondents file a Motion requesting relief in compliance with the Board's directions, the Complainant may file a reply to the Motion with Board on or before ten days after she receives the Motion.

FOR THE ADMINISTRATIVE REVIEW BOARD:



Janet R. Dunlop
General Counsel

Note: Questions regarding any case pending before the Board should be directed to the Board's legal assistant, Juanetta Walker. Telephone: (202) 693-6200 Facsimile: (202) 693-6220

McDowell v. Doyon Drilling Servs., ARB No. 97-053, ALJ No. 1996-TSC-008 (ARB May 19, 1997); *Debose v. Carolina Power & Light Co.*, 1992-ERA-014, 1994 WL 897419 (Sec'y Feb. 7, 1994), unless the record qualifies for an exemption to such disclosure, 5 U.S.C.A. § 552 (West 1996). Moreover, no assurances of confidentiality can be given in advance of an FOIA request because an agency "promise of confidentiality [cannot] in and of itself defeat the right of disclosure" *Debose*, 1994 WL 897419 at 3 (citations omitted). The Respondents have failed to address this precedent or to present any argument supporting departure from it.

ADMINISTRATIVE REVIEW BOARD

Certificate of Service

ARB CASE NAME: *Adriana Koeck v. General Electric Consumer and Industrial, et al,*

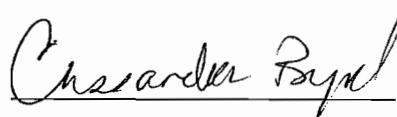
ARB CASE NO. : 08-068

ALJ CASE NO. : 2007-SOX-00073

DOCUMENT : ORDER

A copy of the attached document was sent to the following parties on

JUN 17 2008


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