

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 12 August 2004

Case No.: 2004-SOX-00067

In the Matter of

GARY ZIEGLER,
Complainant,

v.

**SOLITRON DEVICES, INC. and
SHEVACH SARAF, individually,**
Respondents

**ORDER GRANTING COMPLAINANT'S MOTION
TO WITHDRAW HIS CLAIM**

This case arises out of a complaint of discrimination filed pursuant to the employee protection provisions of section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 USC 1514A (the Act). The Act affords protection from employment discrimination to employees of companies with a class of securities registered under section 12 of the Securities Exchange Act of 1934, 15 USC 781, and companies required to file reports under section 15(d) of the Securities Exchange Act of 1934. Specifically, the law protects "whistleblower" employees from retaliatory or discriminatory actions by the employer because the employees provided information to their employer, a federal agency, or Congress relating to alleged violations of 18 USC 1341, 1343, 1344, 1348, or any provision of federal law relating to fraud against shareholders.

Gary Zeigler (Complainant) filed a complaint under the Act against Solitron Devices, Inc. (Respondent). On June 30, 2004, Complainant received notification from the Regional Administrator of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, that his claim was being dismissed. Claimant on July 27, 2004 filed a timely objection to OSHA's preliminary order. Complainant appealed the Regional Administrator's decision on July 27, 2004 and requested a formal hearing before the Office of Administrative Law Judges. The case was assigned to me and on August 5, 2004 I issued an order setting a hearing for August 26, 2004.

On August 11, 2004 Complainant filed a motion seeking to withdraw his complaint. Complainant seeks instead to pursue his claim in the United States District

Court for the Southern District of Florida. The Act gives Complainant the right to bring an action for *de novo* review of his complaint in the appropriate federal district court if the Secretary of Labor has not issued a final decision within 180 days of the filing of his complaint. My review of the case reveals that more than 180 days have passed since Complainant filed his complaint and that Complainant is not responsible for this delay. A final order has not been issued, and a formal hearing has not taken place. Therefore, I will grant Complainant's motion to withdraw his claim.

On July 29, 2004, Respondent filed a "Request for Attorneys' Fees" against Complainant for filing a complaint that is frivolous and was brought in bad faith. On August 11, 2004, Complainant objected stating that the complaint was not frivolous and brought in bad faith and is not supported by any evidence.¹

ORDER

It is hereby **ORDERED** that Complainant's motion to withdraw his claim is **GRANTED**. The formal hearing of this case scheduled for August 26, 2004 in Ft. Lauderdale, Florida, is hereby **CANCELLED**.

It is further **ORDERED** that Respondent's request for the award of its attorney's fees against Complainant is **DENIED**.

A

PAUL H. TEITLER
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF APPEAL RIGHTS: This decision shall become the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.110, unless a petition for review is timely filed with the Administrative Review Board ("Board"), US Department of Labor,

¹ The regulations at 29 C.F.R. § 1980.109(b) permit the award of a reasonable attorney's fee – not exceeding \$1,000 – to a respondent where the administrative law judge "determines that a complaint was frivolous or was brought in bad faith." I find that the information in the record before me is insufficient to establish that the complaint was frivolous or filed in bad faith. Moreover, I find that it is not appropriate to hold a formal oral hearing for the sole purpose of determining whether the award of an attorney's fee (not to exceed \$1,000) is warranted in this case, as it would be impracticable and waste of the Court's time because it would require extensive litigation of the merits of the complaint. Consequently, Respondent's request for the award of an attorney's fee is denied.

Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210, and within 30 days of the filing of the petition, the ARB issues an order notifying the parties that the case has been accepted for review. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. See 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b), as found OSHA, Procedures for the Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002; Interim Rule, 68 Fed. Reg. 31860 (May 29, 2003).