



Issue Date: 26 May 2005

CASE NO.: 2005-SOX-00049

In the Matter of:

KRISTOPHER KILGORE,
Complainant,

vs.

SEAGATE TECHNOLOGY,
Respondent.

ORDER GRANTING REQUEST FOR DISMISSAL

This matter arises under the employee protection provision of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, (Public Law 107-204), 18 U.S.C. § 1514A (“Act” or “SOX”) as implemented by 29 C.F.R. Part 1980. This proceeding was initiated before the Office of Administrative Law Judges (“OALJ”) on April 15, 2005, when the Complainant, Kristopher Kilgore, filed objections to the Secretary’s findings following an investigation of a complaint he filed under the Act against Seagate Technology, the Respondent, and asked for a hearing before the OALJ.

On March 8, 2005, before filing his objection to the Secretary’s findings, the Complainant filed a civil action in the Federal District Court for the Northern District of California seeking relief under the Act. In his request for a hearing before the OALJ, the Complainant asked, in the alternative, for a stay of the OALJ proceedings and a transfer of jurisdiction to the Federal District Court.

On April 25, 2005, I held a telephonic status conference with counsel for both parties to discuss the Complainant’s request. The Complainant’s counsel indicated that he wanted jurisdiction transferred to the Federal District Court but would submit a request after conferring with his client. Respondent’s counsel stated that there should be an election of forums, and the OALJ proceeding should not be stayed. He filed a motion on the same day asking that the OALJ proceeding be dismissed because of the pending Federal litigation.

On May 13, 2005, after receiving no request to dismiss from the Complainant’s counsel or a response to Respondent’s motion to dismiss, I issued an order ordering the Complainant to either submit his request for dismissal or respond to the Respondent’s motion to dismiss. The Complainant has now asked that the instant case be dismissed without prejudice so that jurisdiction can be transferred to the District Court.

Since an action based on the same claim that is the subject of this proceeding is already pending in Federal District Court, dismissal of this case is appropriate.

Accordingly, the Complainant's Request for Dismissal Without Prejudice is GRANTED. It is hereby ORDERED that this matter be DISMISSED so that this matter can be pursued in Federal District Court.

A

JENNIFER GEE
Administrative Law Judge