

U.S. Department of Labor

Office of Administrative Law Judges
50 Fremont Street - Suite 2100
San Francisco, CA 94105

(415) 744-6577
(415) 744-6569 (FAX)



Issue Date: 28 January 2005

CASE NO. 2005-SOX-0003

In the Matter of:

MIKE MCCLENDON,
Complainant,

vs.

HEWLETT-PACKARD COMPANY,
Respondent.

ORDER OF DISMISSAL

On July 8, 2004, Complainant Mike McClendon filed a complaint in which he alleged that Respondent Hewlett-Packard Company (HP) violated the whistleblower protection provisions of the Sarbanes-Oxley Corporate and Criminal Accountability Act of 2002 (the Act), 18 U.S.C. § 1514A. On January 24, 2005, Robert C. Huntley, Esq. filed a Notice of Appearance as counsel on behalf of Mr. McClendon and a Request for Leave to Withdraw Complaint and Re-file in United States District Court.

The Act provides that a complainant may file a complaint in United States District Court if the Secretary of Labor has not issued a final decision within 180 days of the filing of the initial complaint to the Occupational Safety and Health Administration and there is no showing that such delay is due to the bad faith of the complainant. 18 U.S.C. § 1514A(b)(1)(B) and 29 C.F.R. § 1980.114(a). The complainant is required to file a notice of his intent to proceed in District Court fifteen days in advance of his filing in federal court and this notice must be served on all parties to the proceeding and the administrative law judge. 29 C.F.R. § 1980.114(b).

Mr. McClendon's complaint was filed with the Department of Labor on July 8, 2004, and he was entitled to file in District Court as of January 4, 2005. I construe Mr. McClendon's request for leave to withdraw as a notice of intent to proceed in federal court pursuant to 29 C.F.R. § 1980.114(b). Therefore, this matter is hereby **DISMISSED** and the hearing set for April 12, 2005, in Boise, Idaho is **CANCELLED**.

A

ALEXANDER KARST
Administrative Law Judge

AK:jb