



**Issue Date: 17 April 2006**

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In the Matter of

DEBRA TAYLOR JOHNSON  
Complainant

Case No. 2006 SOX 00052

v.

STEIN MART  
Respondent

Case No. 4-1510-05-015  
.....

### Order Dismissing Complaint

This case arises pursuant a complaint of discrimination filed under 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 complaint was filed with Occupational Safety and Health Administration on May 19, 2005. Following an investigation, OSHA denied the complaint on January 5, 2006. Complainant appealed OSHA's decision and the matter was forwarded to the Office of Administrative Law Judges on February 6, 2006. Thereafter, a hearing scheduled to convene on March 7, 2006, was continued at Respondent's request, without objection by Complainant, and re-scheduled for April 18, 2006.

On April 7, 2006, Respondent moved for summary decision dismissing the complaint and requested a second continuance pending disposition of its motion. Since Complainant's response to the motion for summary decision was not due until April 17, 2006, I convened a telephone conference on April 13, 2006, to afford Complainant an opportunity to address the request for a continuance. During the conference call, Complainant advised that she had decided to pursue her claim in federal district court.

The act gives a complainant who has not acted in bad faith the right to bring an action for *de novo* review in an appropriate federal district court if the Secretary of Labor has not issued a final decision within 180 days of the date the complaint was filed. In this matter, 180 days have tolled and a final decision has not issued. Complainant has removed her case from the administrative process, and

jurisdiction to proceed now rests with the district court. 18 USC 1514A (b)(1)(B). These proceedings must, therefore, be dismissed. Accordingly;

ORDER

IT IS ORDERED that Respondent's pending motions for summary decision and for a continuance are dismissed for lack of jurisdiction; and

IT IS FURTHER ordered that the hearing set for April 18, 2006, be, and it hereby is, canceled; and,

IT IS FURTHER ORDERED that the complaint filed in this matter be, and it hereby is, dismissed.

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Stuart A. Levin  
Administrative Law Judge