



Issue Date: 03 October 2006

CASE NO.: 2006-SOX-00083

In the Matter Of:

DESMOND WALSH, III
Complainant

v.

**STRYKER CORPORATION and
STRYKER BIOTECH**
Respondents

ORDER GRANTING COMPLAINANT'S MOTION TO WITHDRAW COMPLAINT

This matter arises under a claim for whistleblower protection filed on August 29, 2005, by Desmond Walsh, III ("Complainant") against his alleged employer, Stryker Corporation and Stryker Biotech ("Employers" or "Respondents") under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C.A. § 1514A (West 2004) and the procedural regulations found at 29 C.F.R. Part 1980 (2004). On April 3, 2006, the Regional Administrator of the U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA") notified the Complainant that the Secretary of Labor, acting through her agent, the Regional Administrator of OSHA, found no violation of these provisions. On May 4, 2006, the Complainant appealed to the Department of Labor's Office of Administrative Law Judges ("OALJ") for a formal hearing. A Notice of Hearing and Pre-Hearing Order issued on May 5, 2006, set the hearing for July 6, 2006, and established the procedures and timelines for preliminary motions, discovery and exchange of pre-hearing statements. Subsequent Orders continued the hearing to September 12, 2006, and then to December 21, 2006.¹

On September 15, 2006, the Complainant sent a letter to the undersigned serving notice of removal of the claim to federal district court. Attached to the letter were two documents. The first titled "Motion to Withdraw and Transfer Complaint to U.S. Federal District Court and Terminate Jurisdiction with U.S. Department of Labor" was construed by the undersigned as a motion to withdraw objections to the Secretary's findings. Compl. Mot. to Withdraw. The second document titled "United States District Court District of Massachusetts Notice of

¹ Several motions regarding discovery issues were filed and addressed by the undersigned. In addition, a Status Conference on the discovery issues was held on September 13, 2006, at which the Complainant agreed to provide responses to the Respondents' discovery requests and to sit for his deposition. Transcript Sept. 13, 2006 Status Conference.

Removal of Case No. 2006-SOX-0083 U.S. Department of Labor” was filed by the Complainant with the Clerk’s Office of the U.S. District Court for the District of Massachusetts on September 15, 2006. Notice of Removal.

On September 19, 2006, the undersigned issued an Order Directing Complainant to Provide Additional Information in Support of His Motion to Withdraw and Transfer Complaint. In the order, I explained that the document the Complainant filed with the district court was not a complaint. I also explained that if the Complainant’s request to withdraw his objections to the Secretary’s findings that the Respondents did not violate the Sarbanes-Oxley Act were granted before he filed a complaint in the federal district court, the Secretary’s findings would become final and not subject to court review. Consequently, I ordered that no later than October 2, 2006, the Complainant was to either provide documentation showing he filed his complaint in federal district court or to provide a statement acknowledging that he understands that by withdrawing his complaint under 29 C.F.R. § 1980.111(c), the Secretary’s findings are unopposed and become final, and that any later SOX complaint he might attempt to file against the Respondents related to his employment with Respondents would be precluded as untimely. Sept. 19, 2006 Order.

Consistent with his past practice, the Complainant failed to comply with the September 19, 2006 Order as he provided neither documentation showing he filed a complaint in federal district court nor a statement demonstrating he understands the ramifications of voluntarily withdrawing his objections to the Secretary’s findings before the OALJ. The September 19, 2006 Order informed the Complainant of the consequences of his voluntary withdrawal of his objections/complaint to the Secretary’s findings and afforded the Complainant ample opportunity to protect his procedural options under the Sarbanes-Oxley Act. As the Complainant was explicitly informed of the effect of his request to voluntarily withdraw his objections to the Secretary’s findings, and he failed to take either of the actions directed by the undersigned’s Order of September 19, 2006, the Court concludes that the Complainant’s motion to withdraw is with full knowledge of the consequences thereof and now grants the motion to withdraw objections/complaint before the OALJ.

ORDER

It is hereby **ORDERED** that the Complainant’s motion to withdraw his objections/complaint before the OALJ is **GRANTED**. The formal hearing in this case scheduled for December 21, 2006 is hereby **CANCELLED**.²

SO ORDERED.

A

COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts

² On September 21, 2006, the Respondents filed a Motion to Dismiss and a Memorandum in Support along with supporting documentation. As I have now granted the Complainant’s voluntary withdrawal of his objections/complaint, the Respondents’ motion to dismiss is moot.