



Issue Date: 21 February 2008

Case No.: 2007-SOX-00092

In the Matter of:

JIRI PIK,
Complainant,

v.

GOLDMAN SACHS GROUP, INC., et al,
Respondents.

DECISION AND ORDER
DISMISSING THE COMPLAINT

This matter arises out of a complaint filed by Jiri Pik (“Complainant”) against Goldman Sachs Group, Inc., et al,¹ (“Respondent”) 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 (“SOX” or “Act”). The Act forbids publicly-traded companies from retaliating against employees who provide information to designated authorities indicating their belief that the employer has violated a rule or regulation of the Securities Exchange Commission or another federal law relating to fraud against shareholders. 18 U.S.C. § 1514A(a)(1).

This complaint was filed on August 29, 2007, and dismissed by the Occupational Safety and Health Administration (“OSHA”) on September 14, 2007. The Complainant alleged he was placed on medical leave and his employment was subsequently terminated in retaliation for reporting to Respondent and law enforcement matters concerning espionage. OSHA dismissed the complaint for want of jurisdiction to investigate the claim because the Complainant did not work for the Respondent within the United States.

The Complainant appealed OSHA’s decision and the matter was referred to me on September 21, 2007. The Complainant argues that he should have been transferred to the Respondent’s New York office at the time of his dismissal by the Respondent and, therefore, the alleged adverse action took place in the United States. I issued an Order to Show Cause on October 16, 2007, ordering the parties to address the subject matter jurisdiction issue.

¹ The Respondent has noted that the Complainant worked for Goldman Sachs Services Limited (“GSSL”), a company registered in the British Virgin Islands. OSHA determined that the Respondents may be “integrated employers” under SOX but the Respondents reserve the right to raise the issue that the Complainant was separately employed by GSSL and not the Respondents.

On October 29, 2007, the Complainant responded, again suggesting that he was to be transferred to the Respondent's New York office. The Complainant did not refute that he is a non-U.S. worker and that the alleged adverse action (termination of employment) took place at a London office of the Respondent.

The Respondent submitted a statement of position on February 15, 2008, arguing that the alleged adverse action and events leading up to it took place in London. The Respondent included the Affidavit of Sharon Kasok, Vice President of the Employee Relations Department for the Respondent, stating that the Complainant began his employment with the London office of GSSL in June 2006, and worked until September, 2006, before being placed on paid leave and later terminated in June, 2007. The Respondent argues that the whistleblower provisions of SOX do not apply to employment actions outside of the United States. The Respondent supports its argument by citing to *Carnero v. Boston Scientific Corp.*, 433 F.3d 1 (1st Cir. Jan. 5, 2006), for authority.

I agree with the Respondent's argument that there is no jurisdictional basis for hearing this matter. In accordance with *Carnero*, the Complainant is not a covered employee because he worked in the Respondent's London office and all alleged adverse employment actions took place in London. The Complainant's argument that this court should hear this claim because he was supposed to be transferred to the Respondent's New York office is unsupported and irrelevant. As established in *Carnero*, the whistleblower provisions of the Act apply only to employees working within the United States. Consequently, the complaint is hereby dismissed.

ORDER

It is ORDERED that the complaint is hereby DISMISSED.

A

John M. Vittone
Chief Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of the administrative law judge's decision. *See* 29 C.F.R. § 1980.110(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1980.110(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.109(c). Even if you do file a Petition, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days after the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).