



In the Matter of:

VICTOR M. CROWN,

ARB CASE NO. 11-015

COMPLAINANT,

ALJ CASE NO. 2010-SOX-060

v.

DATE: July 15, 2011

CITY OF CHICAGO,

and

COOK COUNTY, et al.,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Victor M. Crown, *pro se*, Park Ridge, Illinois

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*; and Lisa Wilson Edwards, *Administrative Appeals Judge*

FINAL DECISION AND ORDER DISMISSING COMPLAINT

BACKGROUND

Victor M. Crown, the Complainant, filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that the Respondents retaliated against him in violation of 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 (SOX).¹ The OSHA Regional Administrator concluded that the City of Chicago is not a company within the SOX's coverage because it did not have a class of securities registered under section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, and was not required to file reports under section 15(d) of the Securities Exchange Act, 15 U.S.C. § 78o(d). Therefore it denied Crown's complaint.

Crown requested a hearing before a Department of Labor Administrative Law Judge (ALJ). On October 29, 2010, the ALJ issued an Initial Decision and Order – Dismissal of Complaint (D. & O.). The ALJ concluded that neither the City of Chicago, nor Cook County fall within SOX's coverage because they do not issue securities registered under section 12, nor are they required to file reports under section 15(d) of the Securities Exchange Act.

Crown filed a petition for review with the Administrative Review Board.² On December 15, 2010, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule in this case. The terms of the Board's order required Crown to file an opening brief, not to exceed thirty (30) double-spaced typed pages, on or before January 14, 2011. The Board further cautioned Crown, "If the Complainant fails to file the initial brief on time, the Board may dismiss the Complainant's appeal."

Although warned that the Board could dismiss the Complainant's petition for review if he did not timely file his opening brief, Crown did not file a brief in compliance with the Board's order. Accordingly, we ordered Crown to show cause why the Board should not dismiss his petition for review because he failed to prosecute his appeal in accordance with the Board's briefing order.³

¹ 18 U.S.C.A. § 1514A (Thomson West 2010).

² The Secretary of Labor has delegated her authority to issue final agency decisions under the SOX to the Administrative Review Board. 29 C.F.R. § 1980.110(a) (2010). *See* Secretary's Order 1-2010 (Delegation of Authority and Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010).

³ The Board also gave the Respondents the opportunity to reply to Crown's response to the Order, and we suspended the briefing schedule.

On June 28, 2011, the Board received a document from Crown entitled, “Motion to Reconsider Dismissal of Petition under FRAP 40(A)(2).” In this document, Crown acknowledged, “On 12/15/2010, the Administrative Review Board issued a Notice of Appeal and Order Establishing a Briefing Schedule in this case, with a brief requested on or before January 14, 2011.”⁴ But Crown failed to explain why he had failed to file his opening brief as ordered.

DISCUSSION

The Board’s authority to effectively manage its affairs, including the authority to require parties to comply with Board briefing orders, is necessary to “achieve orderly and expeditious disposition of cases.”⁵ This Board has authority to issue sanctions, including dismissal, for a party’s failure to comply with the Board’s orders and briefing requirements.⁶

Considering that Crown is proceeding in this appeal without representation by counsel, this Board is willing to extend to him a degree of latitude in complying with the Board’s procedural requirements. This latitude, however, is not without bounds. The Board notified Crown of his obligation to file an opening brief and warned him that if he failed to do so, the Board could dismiss his appeal. Nevertheless Crown failed to file an opening brief as ordered. The Board then gave Crown the opportunity to explain why he had failed to file his brief, and he provided no explanation whatsoever.

The Board recognizes that dismissal of an appeal for failure to file a conforming brief is a very serious sanction and one not to be taken lightly. But even if the Board considered the lesser sanction of construing Crown’s petition for review as a brief and requiring the Respondents to reply only to those arguments set forth in Crown’s petition, dismissal would be required. It would serve no purpose to require the Respondents to respond to the points raised in the petition for review because the petition fails to address the specific grounds on which the ALJ’s based his D. & O., i.e., that neither the City of Chicago, nor Cook County fall within SOX’s coverage because they do not issue securities registered under section 12 and are not required to file reports under section 15(d) of the Securities Exchange Act.

⁴ Motion to Reconsider Dismissal of Petition under FRAP 40(A)(2) at 2.

⁵ *Link v. Wabash*, 370 U.S. 626, 630-31 (1962).

⁶ See *Blodgett v. TVEC*, ARB No. 03-043, ALJ No. 2003-CAA-7 (ARB Mar. 19, 2003) (dismissing complaint for failure to comply with briefing order); cf. Fed. R. App. P. 31(c) (allowing dismissal as sanction for failure to file a conforming brief); Fed R. App. P. 41(b) (permitting courts to dismiss a complaint for failure to comply with court orders).

Accordingly, we **DISMISS** Crown's complaint because he has failed to file a timely brief in support of his petition for review and has failed to demonstrate any cause, much less good cause, for his failure to do so.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LISA WILSON EDWARDS
Administrative Appeals Judge