



Issue Date: 08 June 2017

Case No.: **2017-ERA-4**

In the Matter of:

MYLON LARRICK,
Complainant,

v.

BECHTEL NATIONAL, INC.
Respondent.

ORDER OF DISMISSAL

This case arises under the whistleblower protection provisions of the Energy Reorganization Act, 42 U.S.C. §5851. I issued a Notice of Hearing and PreHearing Order on April 26, 2017. That Order sets the case for formal hearing in Akron, Ohio on November 13, 2017. A telephone status conference is set for June 14, 2017.

Respondent has filed a Motion to Dismiss, asserting that Complainant did not file his complaint of discrimination with the Occupational Health and Safety Administration (“OSHA”) within the 180-day limit contained in 42 U.S.C. §5851(b)(1), and that his complaint of discrimination is thus untimely. OSHA dismissed the complaint on this basis.

Respondent’s Motion to Dismiss was filed on May 19, 2017. By rule, Complainant’s opposition to the Motion to Dismiss was due within 14 days of the date on which he was served with the Motion.¹ Complainant has not submitted any opposition to the Motion to Dismiss, nor has he sought an extension of time to make such a filing.

Pursuant to 29 C.F.R. § 18.201, I take official notice of the content of the Secretary’s Findings contained in the Notice sent to the parties by OSHA on February 27, 2017. That Notice indicates that Complainant was advised on July 18, 2016 that he would be laid off at a later date. Complainant filed his discrimination complaint with OSHA on February 27, 2017.

The Administrative Review Board has held that “[t]he date that an employer communicates to the employee its intent to implement an adverse employment action marks the occurrence of a violation, rather than the date the employee experiences the consequences.” *Belt v. United States Enrichment Corporation*, ALJ Case No. 01-ERA-19, ARB Case No. 02-117

¹ See 29 C.F.R. §18.33(d).

(ARB February 26, 2004), *affirmed sub nom. Belt v. United States Department of Labor*, 163 Fed.Appx. 382 (6th Cir. 2006).

Complainant did not file his discrimination complaint with OSHA within 180 days of Complainant being notified that his employment with Respondent was going to end. No argument for equitable tolling has been made. Complainant's complaint to OSHA was thus untimely, and his Complaint must be dismissed.

This case is hereby **DISMISSED** as untimely. To the extent Complainant has attempted to broaden his original Complaint by adding new claims, those new claims are also **DISMISSED** as they were not first presented to OSHA within the 180-day time limit. The hearing set for November 13, 2017 in Akron, Ohio, is hereby **CANCELLED**. The telephone conference set for June 14, 2017, is hereby **CANCELLED**.

Steven D. Bell
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board ("the Board") within 10 business days of the date of this decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

The date of the postmark, facsimile transmittal, or e-filing will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. *See* 29 C.F.R. §§ 24.109(e) and 24.110.