



Issue Date: 28 August 2007

Case No.: **2006-SOX-00085**

In the Matter of:

**MURRAY MALIN,
Complainant,**

v.

**SIEMENS MEDICAL SOLUTIONS
HEALTH SERVICES CORPORATION/
SIEMENS MEDICAL SOLUTIONS USA, INC.
Respondents.**

**DECISION AND ORDER APPROVING COMPLAINANT'S TRANSFER OF THIS
COMPLAINT TO FEDERAL DISTRICT COURT AND CLOSING JURISDICTION WITH
U.S. DEPARTMENT OF LABOR**

The above-captioned matter arises under the employee protection provisions of Title VIII of the Sarbanes-Oxley Act of 2002 (the "Act" or "SOX"), Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Public Law 107-204, codified at 18 U.S.C. § 1514A. Actions brought under these statutes are governed by the rules set forth in 29 C.F.R. Part 1980, as well as the general procedural rules set forth in 29 C.F.R. Part 18. Complainant filed a complaint on December 19, 2005, alleging that Respondents¹ terminated his employment in violation of SOX. On March 30, 2006, the Secretary of Labor issued Findings which concluded that neither named Respondent was a publicly-traded company covered under the Act. Complainant filed objections to the Secretary's Findings and a request for hearing before the Office of Administrative Law Judges ("OALJ") on May 12, 2006.

Contained in Complainant's objections to the Secretary's Findings was a Motion to Amend his Complaint to add Siemens AG² as a party and for the case to be remanded to the Department of Labor for reinvestigation. The undersigned denied

¹ Complainant was employed by Siemens Medical Solutions Health Services Corporation ("Siemens Health"). Siemens Health is a subsidiary of Siemens Medical Solutions USA, Inc. ("Siemens Med").

² Siemens AG is a publicly-traded entity and the parent company to Siemens Med and Siemens Health.

Complainant's Motion on July 27, 2006, and permitted discovery on the jurisdictional issue.³

On February 14, 2007, Respondents submitted a Motion for Summary Decision arguing that DOL lacks jurisdiction over this case. On March 1, 2007, Complainant's counsel faxed a request for a conference call, contending that Respondents had failed to produce a deponent who could testify on SOX compliance. Complainant then filed its opposition to Respondents' motion on March 6, 2007, and Respondents submitted a reply brief on March 13, 2007. A conference call was held with counsel for the parties and Dr. Malin on March 13, 2007, in which the undersigned requested that the parties submit in writing their positions on whether the deposition of Robert Bea, the chief compliance officer for Siemens Med, should be compelled. Respondents' submission was received April 20, 2007. Counsel for Complainant did not file any submission on the issue, but Dr. Malin submitted a position in writing on April 20, 2007. Both parties supplemented their positions with exhibits. On May 15, 2007, an Order Denying Complainant's Request to Compel Deposition was issued.

Complainant, though his counsel, informed the undersigned and opposing counsel by facsimile received May 21, 2007, that he intended to withdraw his claim and asked that a ruling on the pending summary decision motion be suspended. On June 26, 2007, Complainant's attorney informed my legal assistant via an e-mail that Complainant anticipated filing a complaint in federal district court within fifteen days. Respondents' counsel provided a copy of Complainant's July 18, 2007, filing in the United States District Court for the District of Maryland to the undersigned via a facsimile received July 20, 2007. Complainant wrote a letter on July 31, 2007, stating that he had filed a complaint in federal district court as anticipated and requesting withdrawal of his complaint.⁴

The implementing regulations of the Act at 29 CFR § 1980.114(a) provide, in pertinent part:

If the Board has not issued a final decision within 180 days of the filing of the complaint, and there is no showing that there has been delay due to bad faith of the complainant, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy.

Under this provision, Complainant has the right to bring an action in federal district court because over 180 days have passed since the filing of his complaint and no final decision has been issued by the Board. Furthermore, Complainant may withdraw his

³ Pursuant to the December 14, 2006, Order issued by the undersigned, discovery was to be completed by January 15, 2007. Dispositive motions were due February 15, 2007, with responses due March 6, 2007.

⁴ Though Complainant's submission was dated July 31, 2007, it was not mailed until August 14, 2007, and not received until August 15, 2007.

objections to the Secretary's Findings under 29 CFR § 1980.111(c). This section provides the following:

At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether the withdrawal will be approved.

Complainant's request to withdraw his complaint is timely as the findings and order have not been issued by the undersigned in this matter. Respondents' counsel informed my law clerk on August 23, 2007, through a message left on voicemail that Respondents would not file objections to Complainant's request to withdraw his complaint.

In consideration of the above factors, I will grant Complainant's request to withdraw his claim.

ORDER

It is hereby ordered that Complainant's request to withdraw his complaint is GRANTED without prejudice.

A

WILLIAM S. COLWELL
Associate Chief Administrative Law Judge

Washington, D.C.
WSC:RAG

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, Room S-4309, 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).