



Issue Date: 02 November 2007

CASE NO.: 2006-SOX-00119

In the Matter of:

ROBERT GLEN PLUMLEE,
Complainant,

vs.

ALYESKA PIPELINE SERVICE CO.,
Respondent.

DECISION AND ORDER DISMISSING CASE FOR FAILURE TO PROSECUTE

INTRODUCTION

This case is pending before me pursuant to the employee protection provisions of Section 806 of the Corporate and Criminal Fraud Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”), 18 U.S.C. §1514A *et seq.* The proceeding was initiated before the Office of Administrative Law Judges (“OALJ”) on August 11, 2007, when the Complainant asked for a hearing before the OALJ after the Regional Administrator of the Occupational Health and Safety Administration (“Regional Administrator”) issued a decision on July 7, 2006, dismissing his complaint against Alyeska Pipeline Service Co., BP PLC, and Charles Thiebaud, Jr.

For the reasons set forth below, this case is DISMISSED.

DISCUSSION

The Complainant filed a complaint on March 21, 2006, alleging that Respondents Alyeska Pipeline Service Co., (“Alyeska”), BP p.l.c., and Charles Thiebaud, Jr. had violated the whistleblower protection provisions of Sarbanes-Oxley by denying him consulting work, blacklisting him, and subjecting him to surveillance after he engaged in protected activity. On July 7, 2006, the Regional Administrator issued a determination finding that there was no reasonable cause to find that the Respondents had violated the Sarbanes-Oxley Act and dismissed the complaint. The Complainant then made a timely request for a hearing before the OALJ.

This case was set for hearing before me on October 27, 2006, in Anchorage, Alaska. This hearing was subsequently continued to May 21 through 25, 2007, to allow the parties sufficient time to complete their discovery. On October 6, 2006, Respondent Alyeska Pipeline

Service filed a motion for summary judgment asking that this case be dismissed against it, arguing that it is not a public entity and not subject to Sarbanes-Oxley.

On November 20, 2006, Respondent Charles Thiebaud filed a motion for summary judgment asking to be dismissed from this proceeding. He argued that he was not a proper party because he was not an employee, agent, or contractor of a public company. He also denied that he engaged in any form of retaliation against the Complainant.

Then, on January 24, 2007, Respondent BP p.l.c. also filed a motion for summary judgment, arguing, in part, that it is a foreign company without sufficient contacts with the United States for the Department of Labor to exercise jurisdiction over it for the Complainant's complaint. Alternatively, it argued that there was no allegation or evidence that it had taken any action against the Complainant.

The Complainant filed responses opposing all the motions for summary judgment. On February 2, 2007, I denied Alyeska's motion for summary judgment, finding that there was a factual dispute as to whether Alyeska is an agent of a publicly-traded company, as well as whether Alyeska did retaliate against the Complainant.

On February 6, 2007, I received a letter from the Complainant dated February 3, 2007, stating that he had accepted a job offer to work in Kuwait followed by an assignment in Iraq on the condition that he report for work immediately. He stated that he was leaving for Kuwait on February 4, 2007, for at least 8 months. He stated that he did not have an address yet in Kuwait City but had an e-mail address that could be used to communicate with him. He asked for guidance on how his case should be handled. He did not serve copies of the letter on any of the parties, so my office forwarded copies to the parties by fax.

On February 8, 2007, I issued an order acknowledging receipt of the Complainant's letter and advising the parties that I was going to treat it as a motion for a continuance and advised them that they should respond to the motion. At my request, my law clerk scanned the order and sent it to the Complainant as an attachment to an e-mail she sent to him on February 9, 2007. The Complainant responded to my law clerk's e-mail on February 11, 2007, and stated that he was having his mail from Alaska forwarded to Kuwait on a weekly basis via UPS Express, so he would be able to respond to my orders.

On February 13, 2007, I granted Charles Thebaud's Motion for Summary Judgment and dismissed the complaint against him.

On February 23, 2007, I issued an order continuing the scheduled hearing in this case to November 26, 2007. I ordered the Complainant to file a status report by the 15th of each month advising me of his employment status, including, if available, the probable date that he would be returning from his Middle East employment. I also ordered him to notify Respondents if he was given any time to return to the United States before his employment ended and ordered him to cooperate with Respondents in scheduling his deposition if he made a trip to the United States before his employment ended.

On April 6, 2007, I granted BP p.l.c.'s Motion for Summary Decision and dismissed the complaint against it.

I received no reports whatsoever from the Complainant about his employment status in the Middle East. On September 14, 2007, Alyeska filed a Motion for Summary Judgment and a Motion to Dismiss for Failure to Prosecute Claim. It argued that Sarbanes-Oxley does not permit claims against non-public respondents where there are no claims made against a publicly traded entity. It also argued that the Complainant had abandoned his claim because he failed to comply with my explicit order to file monthly reports and failed to keep Alyeska informed as to his availability to begin discovery in this case.

On September 20, 2007, I issued an order requiring the Complainant to respond to Alyeska's motions and also ordered him to show cause why this case should not be dismissed for failure to prosecute. I ordered him to respond to the order so that his response was received by October 15, 2007. The order was sent to the Complainant's Anchorage address.

As of October 26, 2007, I have received no response from the Complainant to Alyeska's motions to dismiss or to the Order to Show Cause.

The OALJ regulation at 29 C.F.R. § 24.6(e)(4)(B) provides that an ALJ may dismiss a claim upon a Complainant's failure to comply with a lawful order issued by the ALJ after first issuing an order to show cause why the case should not be dismissed.

In this instance, I issued an order on February 23, 2007, requiring the Complainant to file monthly reports keeping me and the parties informed of his employment status in the Middle East, and I ordered him to keep the Respondents' informed of his status and to cooperate in scheduling his deposition. He did not comply with that order. I also ordered him to show cause why his case should not be dismissed for failure to prosecute, and he has not responded to that Order.

The Complainant advised my law clerk that he had made arrangements for his mail to be delivered to him on a weekly basis by UPS Express, so there is no reason to believe that he did not receive either my February 23, 2007, order or my September 20, 2007, order to show cause. In view of his failure to respond to comply with my February 23, 2007, Order, and his failure to respond to my September 20, 2007, Order, I find there is good cause to dismiss this case for failure to prosecute. In view of this finding, there is no need to address Alyeska's latest motion for summary judgment.

It is hereby ORDERED that this case be DISMISSED pursuant to 29 C.F.R. § 24.6(e)(4)(B).

A

JENNIFER GEE
Administrative Law Judge

San Francisco, California

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).