

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 09 February 2010

CASE NO.: 2010-SOX-00007

In the Matter of

SUSAN ANDERSON
Complainant,

v.

**SCHERING-PLOUGH CORPORATE
WORLD HEADQUARTERS**
Respondent.

ORDER
OF
DISMISSAL

Respondent has moved to dismiss the complaint filed herein on October 9, 2009 on the grounds that such filing was made beyond the ninety (90) day limit (from the alleged adverse employment action) as prescribed at 18 U.S.C. 1514(A)(b)(2)(D) and 29 C.F.R. 1980.103(d).

Complainant asserts that her "...incapacitation & disabilities delayed [her] filing date."

I am compelled to find that Complainant has failed to provide evidence necessary to qualify her for an exception to the time constraints governing the filing of complaints under 18 U.S.C. 1514(A).

The record is clear that the adverse employment action (job termination) was taken on October 27, 2008 (EX A annexed to Respondent's Motion for Summary Decision). The complaint was filed on October 9, 2009 (OSHA letter to Complainant 10/29/09), well beyond the ninety (90) day statutory time period.

There is no showing that Complainant is entitled to equitable tolling of the subject time constraints, nor any evidence of extraordinary circumstances, i.e. total inability to file the complaint timely, warranting any exception thereto.

Accordingly, the complaint of Susan Anderson is DISMISSED.

A

Ralph A. Romano
Administrative Law Judge

Cherry Hill, New Jersey

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).