



**Issue Date: 01 April 2010**

**CASE NOS: 2010-SOX-24**

**IN THE MATTER OF**

**DERRICK SLADE BRITTAIN**

**Complainant**

**v.**

**TYSON FOODS**

**Respondent**

**DECISION AND ORDER DISMISSING THE COMPLAINT AND CANCELLING  
HEARING**

**BACKGROUND**

This case arises under Section 806 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. §1514A (“Act”) By complaint filed November 30, 2009, Complainant alleges he engaged in protected activity which resulted in unfavorable personnel action. In OSHA’s determination dated January 5, 2010, OSHA ruled that Complainant’s complaint failed to demonstrate protected activity under the Act. Complainant appealed OSHA’s determination and the matter is now before the Office of Administrative Law Judges set for formal hearing on April 19, 2010.

Prior to trial, Respondent has filed a Motion to Dismiss seeking dismissal of Complainant’s complaint on the grounds the same fails to state a claim under which relief may be granted under the Act. Despite given an opportunity to do so, Complainant has not responded to the Motion.

**DISCUSSION AND FINDINGS**

To establish a violation under the Act, Complainant must first show by a preponderance of the evidence that he engaged in protected activity. The Act specifically protects employees who provide information which the employee “reasonably believes constitutes a violation of section 1341 [mail fraud], 1343 [wire fraud], 1344 [bank fraud], or 1348 [securities fraud], any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.” 8 U.S.C. §1514A(a)(1).

In this instance, Respondent maintains, and I agree, that Complainant's concerns regarding the collection of chicken meat in Respondent's de-bone department did not amount to protected activity under the Act. Specifically, the Complainant, a lead man on the line, allegedly told his supervisor on October 21, 2009, that the meat he was told to collect he thought might be warm and unsafe in violation of USDA Regulations. Dissatisfied with this supervisor's response, over the next five or six days Complainant told three others in management about his concerns. This action on his part, Complainant alleges, created a hostile work environment and led to his leaving his employment.

The Act does not protect all workers' complaints, rather to come under the protection of the Act, a protected complaint must specifically relate to one of the subjects referred to in the Act. An employee who alleges fraud against shareholders must complain about a material commission or omission concerning respondent's financial condition upon which stockholders or potential investors would rely.

In this instance, Complainant did not engage in protected activity under the Act on October 21, 2009, when he informed his supervisor that he thought the chicken meat he was told to collect on the line might be unsafe and in violation of USDA Regulations. Neither did Complainant engage in protected activity under the Act when he took his same concerns to others in management. In other words, while this is not to say Complainant may have had food safety concerns under other Acts, as far as the Act under which this complaint is brought I do not find Complainant's communications to management amounted to protected activity.

### **ORDER**

Complainant's complaint is **DISMISSED** and the hearing scheduled for **April 19, 2010**, is **CANCELLED**.

**So ORDERED** this 1<sup>st</sup> day of April, 2010, at Covington, Louisiana.

**A**

**C. RICHARD AVERY**  
**Administrative Law Judge**

**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).