



Issue Date: 28 April 2010

Case No.: **2010-SOX-28**

In the Matter of:

JERRY HARVEY,
Complainant

v.

SPACE SYSTEMS/LORAL, formerly, FORD AEROSPACE
Respondent

DECISION AND ORDER DISMISSING CLAIM

The Complainant in this case, Mr. Jerry Harvey, wrote a letter to President Barack Obama, dated March 25, 2009, alleging fraud in government contracting by Mr. Harvey's former employer, Ford Aerospace. Mr. Harvey stated that he was most concerned that Ford Aerospace did not have a safety program, and he complained to the Occupational Safety and Health Administration (OSHA) about this problem after two operators were injured in accidents in Ford vehicles. Mr. Harvey stated that he complained to OSHA in August 1989, and lost his job after experiencing a stress-induced heart attack in March 1990. In addition, he stated that one and one-half years later, he was advised that he had been blacklisted by Ford Aerospace, preventing him from obtaining other employment. In his letter to the President, Mr. Harvey also stated that he had recently learned that a certain individual is a lobbyist for Ford, alleged that the individual is bribing government officials whose help Mr. Harvey sought, and went on to state,

My question today: is it the government's intention to "bail out" Ford so they can continue their outrageous conduct and so they will be assured of having enough money to continue bribing Senators and Congressmen?

I have been deprived of at least \$500,000 in lifetime earnings because I reported fraud perpetrated against the taxpayers in the 1980s. If I had that money, I would certainly spend it more wisely than these criminals are doing.

I have tried to get assistance from my Nevada Congressional representatives without success. ... Can you and will you help an honest American who has paid too high a price for his integrity?

Mr. Harvey's letter was referred to OSHA, which conducted an investigation under the Corporate and Criminal Fraud Accountability Act, Section 806 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A, and implementing regulations found at 29 CFR Part 1980. This provision protecting whistleblowers prohibits employers from discharging, demoting, suspending, threatening, harassing or in any manner discriminating against an employee in the terms and conditions of employment because of any lawful act done by the employee to provide information or assist in an investigation pertaining to violation of certain securities laws or fraud against shareholders. OSHA completed its investigation and issued findings on February 22, 2010, concluding Mr. Harvey's complaint was untimely under the Sarbanes-Oxley Act. In the findings, OSHA noted that Ford Aerospace had been acquired by a consortium in 1990 and renamed Space Systems/Loral. Mr. Harvey wrote a letter to OALJ dated February 26, 2010, rejecting OSHA's findings. The case was then assigned to me.

Mr. Harvey's letter to the President did not mention the Sarbanes-Oxley Act, violation of securities laws, or fraud on shareholders (although it did mention fraud in government contracting and fraud on taxpayers). Thus, on its face, the letter does not raise a claim under the Sarbanes-Oxley Act. Moreover, the events adversely affecting Mr. Harvey's employment alleged in his letter to the President took place in the early 1990's, but the Sarbanes-Oxley Act was not passed until 2002. The Act does not apply to conduct that occurred before the Act became effective. Furthermore, the Sarbanes-Oxley Act requires that a complaint be commenced within 90 days after the date on which the violation occurred. 18 U.S.C. § 1514A(b)(2)(D). Because more than 90 days passed from the time Mr. Harvey lost his job and was allegedly told that he had been blacklisted to the time he wrote his letter to the President, by its terms, the letter does not raise a timely claim under the Act.

On March 22, 2010, I issued an Order to Show Cause Why This Case Should Not Be Dismissed. Mr. Harvey filed his response on April 1, 2010. I gave the Respondent until April 21, 2010, to reply. No reply has been received. In his response to the Order to Show Cause, Mr. Harvey has not raised any grounds showing jurisdiction over this claim in the Office of Administrative Law Judges.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This case was initiated by Mr. Harvey's letter to the President dated March 25, 2009.
2. In his letter, Mr. Harvey complained of conduct relating to his employment (that his reporting safety violations led to his termination and blacklisting) which occurred in the late 1980s and early 1990s.
3. Mr. Harvey did not mention the Sarbanes-Oxley Act, violation of securities laws, or fraud on shareholders in his letter.
4. The Sarbanes-Oxley Act was passed and became effective in 2002.

5. The Sarbanes-Oxley Act does not apply to conduct occurring before its enactment.
6. Mr. Harvey's letter to the President fails to state a claim under the Sarbanes-Oxley Act.
7. In his response to the Order to Show Cause, Mr. Harvey has shown no basis for pursuing his claim under the Sarbanes-Oxley Act, or any other statute administered by the Department of Labor and subject to adjudication by the Office of Administrative Law Judges.
8. There is no jurisdictional basis for me to proceed to hearing on Mr. Harvey's claim.

ORDER

IT IS THEREFORE ORDERED that this claim is DISMISSED.

A

Alice M. Craft
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).