



Issue Date: 26 May 2011

Case No.: 2010-SOX-00058

In the Matter of:

DEANNA HOLLIDAY,

Complainant,

v.

OLDCASTLE, INC.,

Respondent.

ORDER DISMISSING COMPLAINT

This case arises under Section 806 (the employee protection provision) of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (Act), 18 U.S.C.A. § 1514A¹, and its implementing regulations found at 29 CFR Part 190. Section 806 provides “whistleblower” protection to employees of publicly traded companies against discrimination by employers in the terms and conditions of employment because of certain “protected activity” by the employee. The investigative report indicates that the Complainant filed this current complaint on February 25, 2008. The complaint was denied by the Regional Administrator, Occupational Safety and Health Administration, Atlanta, Georgia, on August 4, 2010. The Claimant mailed her subsequent request for hearing before an Administrative Law Judge on September 3, 2010.

The original hearing in this case was scheduled to commence Tuesday, April 12, 2011, in Atlanta, Georgia, before this Administrative Law Judge. By Order of March 4, 2011, the hearing was cancelled and continued to the July/August docket. By Order of March 28, 2011, the case was placed on the Court’s Atlanta, Georgia docket to commence at 9:00 AM, Wednesday, July 13, 2011. The Parties were directed to complete discovery by May 27, 2011 and to submit specific prehearing information to the Court by June 30, 2011.

¹ VIII of the SOX is designated the Corporate and Criminal Fraud Accountability Act of 2002. Section 806, the employee protection provision, protects employees who provide information to a covered employer or a Federal agency or Congress relating to alleged violations of 18 U.S.C.A. §§ 1341 (mail fraud), 1343 (wire, radio and television fraud), 1344 (bank fraud) or 1348 (securities fraud), or any rule or regulation of the Securities and Exchange Commission, or any provision of federal law relating to fraud against shareholders.

On May 16, 2011, Complainant's counsel filed a "Notice of Settlement and Dismissal of Complaint" in which he stated "the parties have reached a full settlement and Complainant hereby dismisses her Complaint with prejudice."

Federal regulations at 29 CFR §1980.111(a) permits an individual to withdraw their complaint by filing a written withdrawal. Where the withdrawal is because of a settlement agreement, 29 CFR §1980.111(d) applies. This regulation provides that a settlement agreement may be approved by the Administrative Law Judge, in which case the approved settlement agreement becomes the final Order of the secretary and is enforceable in a civil action before the U.S. District Court for the district in which the violation occurred. There is no provision for civil enforcement of a settlement agreement not approved by the Administrative Law Judge.

In this case, the Complainant, through counsel, has submitted a written request for dismissal of her complaint now pending before this Administrative Law Judge. No written settlement agreement has been submitted for approval with the request for dismissal. The Act requires that a complaint must be filed within 180 days of the date the alleged violation of the Act occurs. Here the last alleged adverse employment actions occurred on January 3, 2008 with the Complainant's termination. Accordingly, the Complainant will be barred from raising the matters set forth by her original complaint upon dismissal of this complaint since any subsequent complaint to raise the issues set forth in this complaint would be outside the 180 day statute of limitations.

ORDER

In view of the foregoing, **IT IS HEREBY ORDERED** that:

1. **The formal hearing in this matter scheduled to commence at 9:00 AM, Wednesday, July 13, 2011, in Atlanta, Georgia is CANCELLED.**
2. **The Complainant's request for dismissal of the complaint is GRANTED and the complaint is DISMISSED.**
3. Should any Party dispute the validity and effect of this Order and seek reconsideration of this Order, that Party may file a "Motion for Relief from an Order" pursuant to Federal Rules of Civil Procedure, Rule 60(b) and 29 CFR §1980.115; **provided, such Motion is filed with the Court within five (5) business days from the date of this Order.** Such a Motion may be filed by facsimile transmission.

A

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia

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. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

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.

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party’s supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party’s legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

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).