



Issue Date: 14 September 2010

OALJ CASE NO.: 2010-SOX-00022

In the Matter of:

MICHAEL M. KIM

Complainant,

v.

THE BOEING COMPANY,

Respondent.

**DECISION AND ORDER GRANTING MOTION FOR RECONSIDERATION OF
WAIVER PROVISION IN 4/12/10 ORDER AND SUBSEQUENT 4/20/10 ORDER AND
ORDER DISMISSING CASE AND CANCELLING HEARING**

This case was assigned to me on February 19, 2010. Trial is set for September 27, 2010, in Seattle, Washington.

The complaint in this action was filed on December 15, 2008 under the employee protection provisions of the Corporate and Criminal Fraud and Accountability Act, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A (“Sarbanes-Oxley,” “SOX,” or “the Act”). The instant appeal from OSHA’s investigative findings has been with this Office since February 11, 2010.

On April 12, 2010, I issued an order which, among other things, continued trial to September 27, 2010, in response to Complainant’s opposed motion for a continuance (the “4/12/10 Order”).

On April 13, 2010, Complainant filed a motion to reconsider my 4/12/10 Order as to waiver of federal jurisdiction (“M4Recon”). In particular, Complainant challenged the following provision of my 4/12/10 Order:

IT IS FURTHER ORDERED that if Complainant does not elect to remove this case to U.S. District Court by giving written notice thereof within fifteen days of this order, the parties each waive their right pursuant to 29 C.F.R. § 1980.114 to bring an action at law or equity for *de novo* review in an appropriate U.S. District Court.

On April 20, 2010, I issued an order denying the M4Recon (“4/20/10 Order”) finding, among other things, that holding waiver of federal jurisdiction allows me to manage my docket properly by avoiding duplicative and potentially wasteful use of judicial resources without

allowing a complainant to flee this forum for the district court well beyond 180 days of filing his or her complaint to the detriment of the opposing party. 4/20/10 Order at 2.

On September 13, 2010, Complainant's counsel filed a cover letter motion for reconsideration of my 4/12/10 Order and my subsequent 4/20/10 Order on the grounds that recent passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended SOX section 806 to provide a new right to a jury trial -- which right he wished to exercise by removing this action to his local federal district court.

On September 14, 2010, Complainant's counsel filed his Notice of Intent to File Action in Federal District Court ("Notice") with this Office stating, on behalf of Complainant, that "[b]ecause this matter has been pending in the Department of Labor for over one year, Complainant intends to proceed with the matter judicially [before the appropriate United States District Court in the state of Washington]." Notice at 2. Accordingly, Complainant has decided pursuant to 29 C.F.R. §1980.114(b) to pursue his case in an alternative forum. The letter motion and Notice state that after conferring with counsel for Respondent, Respondent has no objection to a changed forum.

For good cause found:

IT IS ORDERED that Complainant's letter motion for reconsideration of my 4/12/10 Order's waiver of federal jurisdiction provision and my 4/20/10 Order is **GRANTED** and the waiver language is **EXPUNGED** due to the intervening act of Congress amending section 806 of SOX and providing Complainant with a new right of jury trial.

IT IS FURTHER ORDERED that this action is **DISMISSED** *without prejudice*.

IT IS FURTHER ORDERED that the formal hearing scheduled for September 27, 2010, in Seattle, Washington, is **CANCELLED**.

A

GERALD M. ETCHINGHAM
Administrative Law Judge

San Francisco, California