

Issue Date: 16 July 2010

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

ALJ No. 2010-SOX-00005

JACQUELINE MILLAN
Complainant

v.

AIG, INC. and
AIG FINANCIAL PRODUCTS CORP.
Respondents

Decided July 16, 2010

Before: Jonathan C. Calianos, Administrative Law Judge

Appearances:

Peter B. Prestley, Esq. (Madsen, Prestly & Parenteau, LLC),
Hartford, Connecticut, for the Complainant

Michael Sheehan, Esq., (Paul, Hastings, Janofsky & Walker, LLP),
Chicago, Illinois,
James Murphy, Esq., (Paul, Hastings, Janofsky & Walker, LLP),
New York, New York for the Respondents

DECISION AND ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

This proceeding arises from a complaint of discrimination filed under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of The Sarbanes-Oxley Act

of 2002, 18 U.S.C.A. § 1514A (West 2004) (hereinafter “SOX”) and the procedural regulations found at 29 C.F.R. Part 1980 (2004). On July 14, 2010, the Complainant filed a letter indicating that she intends to bring an action in U.S. District Court to pursue her rights under SOX. For the reasons set forth below, the Complaint is dismissed without prejudice to its reinstatement if the Complainant fails to file an action in Federal District Court.

Procedural Background

In a letter dated October 5, 2009, the Regional Administrator for OSHA, acting as an agent for the Secretary of Labor (“Secretary”), found that while Complainant was a covered employee under SOX and she engaged in protected activity under SOX, the protected activity was not a factor in her termination, and her complaint was dismissed. OSHA No. 1-0080-09-017 (October 5, 2009). On November 6, 2009, the Complainant objected to the Secretary’s findings and requested a hearing *de novo*. The matter was subsequently referred to the Office of Administrative Law Judges for a formal evidentiary hearing which was originally set for February 10, 2010 in Hartford, Connecticut. *See* 29 C.F.R. § 1980.106. Due to initial discovery snafus and the inability of the Complainant to find counsel, on March 2, 2010, I issued an order continuing the formal hearing generally and suspending the discovery deadlines so the parties could focus on obtaining the Complainant’s deposition and determining whether the matter should be referred to a settlement judge. Over the ensuing months, the Complainant was able to obtain new counsel and the parties have engaged in discovery. On June 22, 2010, I issued an order closing discovery on July 30, 2010 and requiring the Complainant to file a statement by July 9, 2010, indicating whether she would waive the provisions of 18 U.S.C. § 1514A(b)(1)(B). On July 14, 2010, the Complainant filed a letter indicating that: “Pursuant to 18 U.S.C. Section 1514(b), and 29 CFR 1980.114, since OSHA has not issued a final decision within 180 days of

the filing of the complaint, we intend to bring an action in court to pursue Complainant's rights under SOX."

Discussion

Under the statutory framework, a person alleging a violation of SOX has two paths for relief: (1) filing a complaint with the Secretary of Labor; or (2) filing an action in U.S. District Court seeking *de novo* review "if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith filing of the claimant." 18 U.S.C. § 1514A(b)(1). A complainant forging a path through U.S. District Court must also notify the Administrative Law Judge at least fifteen days before filing the action in District Court of his or her intent to file such an action. 29 C.F.R. §1989.114(b). I will treat the Complainant's letter filed on July 14, 2010 as providing such notice.

The instant Complaint was filed on February 11, 2009 and 180 days expired by the time this matter was assigned to Office of Administrative Law Judges in November 2009. There is nothing in the record to suggest that any of the delay is attributable to bad faith on the part of the Complainant. Accordingly, the Complainant has a right to file an action in U.S. District Court, and once filed, the Secretary will no longer have jurisdiction over this action. *See Stone v. Duke Energy Corp.*, 432 F.3d 320, 322-23 (4th Cir. 2005). While no action has been filed to date, other judges have found the notice pursuant to 29 CFR §1989.114(b) sufficient to dismiss a pending action without prejudice. *See e.g., Davis v. The Home Depot, Inc.*, 2006-SOX-00017 (ALJ January 26, 2009); *Roberts v. Weatherford International, Ltd.*, 2008-SOX-00069 (ALJ Sept. 25, 2008). I will follow that course. Accordingly, the SOX Complaint filed by Jacqueline Millan is

DISMISSED WITHOUT PREJUDICE to its reinstatement if an action is not filed in U.S.
District Court.

SO ORDERED.

A

JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts