

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 12 March 2010

**CASE NOS: 2010-SOX-15
2010-SOX-16
2010-SOX-17**

IN THE MATTER OF

**SARAH BRANTLEY
ROUZBEH HASHEMI
DAVID PETERSON**

Complainants

v.

WALMART STORES, INC.

Respondent

**ORDER GRANTING RESPONDENT'S MOTIONS TO DISMISS APPEALS
OF SARAH BRANTLEY, ROUZBETH HASHEMI AND DAVID PETERSON**

This proceeding arises under the Sarbanes-Oxley Act of 2002, technically known as the Corporate and Criminal Fraud Accountability Act, P.L. 107-204 at 18 U.S.C. § 1514A, et seq., (herein SOX or the Act), and the regulations promulgated thereunder at 29 C.F.R. Part 1980, which are employee protective provisions.

On February 10, 2010, Respondent, Walmart Stores, Inc. (herein Respondent or Walmart) filed a Motion to Dismiss Appeals of Rouzebeh Hashemi and David Peterson alleging both Complainants failed to file a timely Complaint as ordered by the undersigned in my January 12, 2010 Order Consolidating Cases, Notice of Hearing and Pre-Hearing Order. On February 12, 2010,

Respondent filed an additional Motion to Dismiss Appeal of Sarah Brantley, or in the Alternative, Dismiss Complaint for Failure to State a Claim, seeking dismissal as a matter of law, alleging that Complainant, Sarah Brantley, failed to file a proper timely Complaint.

On January 12, 2010, in an Order Consolidating Cases, Notice of Hearing and Pre-Hearing Order (herein Order), the undersigned ordered all Complainants to file a Complaint alleging in detail the nature of their protected activity and each and every alleged violation of the Act as well as the relief sought in this matter by January 29, 2010.

29 C.F.R. § 18.6 provides, in pertinent part:

(d)(2) If a party or an officer or agent of a party fails to comply with . . . an order . . . of the administrative law judge, the administrative law judge . . . may take such action in regard thereto as is just, including but not limited to the following:

(v) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order . . . was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.

Complainant Sarah Brantley did not file her Complaint until an unsigned copy of an incomplete Complaint, without indication of service on other parties, was sent via facsimile to the OALJ on February 5, 2010, a date after the deadline given by this court to file the Complaint had lapsed. An original of the Complaint has never been received by the undersigned. Accordingly, I find Sarah Brantley's Complaint to be untimely and, therefore, non-compliant with the January 12, 2010 Order. The undersigned notes that neither Rouzbeh Hashemi nor David Peterson ever filed a Complaint as required by the Order.

Considering the foregoing, I find that Respondent is entitled to dismissal in this matter and its Motions to Dismiss the Appeals of Sarah Brantley, Rouzbeth Hashemi and David Peterson, all of whom are represented by counsel, are hereby **GRANTED**.

Accordingly,

IT IS HEREBY ORDERED that Respondent's Motion to Dismiss Appeals of Rouzbeth Hashemi and David Peterson be, and it is, **GRANTED** and that Complainants Rouzbeth Hasmemi's and David Peterson's Complaints are hereby **DISMISSED** with prejudice.

IT IS FURTHER ORDERED that Respondent's Motion to Dismiss Appeal of Sarah Brantley, or in the Alternative, Dismiss Complaint for Failure to State a Claim be, and it is, **GRANTED**; and that Complainant Sarah Brantley's Complaint is hereby **DISMISSED** with prejudice.

IT IS FURTHER ORDERED that the formal hearing scheduled in this case on April 13, 2010, in Fayetteville, Arkansas, be, and it hereby is, **CANCELLED**.

ORDERED this 12th day of March, 2010, at Covington, Louisiana.

A

LEE J. ROMERO, JR.
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, Room S-4309, 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).