

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 14 September 2010

In the Matter of:
YUAN XIE
Complainant

v.

2010- SOX- 00032

HOSPIRA, INC., et. al.
Respondent s

ORDER OF DISMISSAL

This case was set for hearing in Chicago on September 20, 2010. Respondents had requested a continuance. On September 8, 2010, Complainant filed a Notice of Intention to File a Complaint in Federal Court in this matter, which arises under the employee protection (whistleblower) provisions of the Sarbanes Oxley Act of 2002, 18 U.S.C. § 1514A, after the passage of fifteen days, in accordance with 18 U.S.C. § 1514A(b)(1)(B). *See also* 29 C.F.R. § 1980.114(a).

After having been fully advised in these premises, this matter is being dismissed without prejudice to its reinstatement if Complainant fails to file an action in federal district court upon the following:

Section 806(b)(1) of the Sarbanes-Oxley Act, relating to enforcement, provides:

(1) IN GENERAL- A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by--

(A) filing a complaint with the Secretary of Labor; or

(B) 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 of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

18 U.S.C. § 1514A(b)(1). The regulatory counterpart to the statutory provision appears at 29 C.F.R. § 1980.114(a) and specifies that the pertinent inquiry is whether a final decision has been issued by the Administrative Review Board, to which the Secretary's authority has been delegated under Secretary's Order 1-2002, issued on September 24, 2002, 67 Fed. Reg. 64272-64273 (Oct. 17, 2002). The regulations also require a complainant to file a notice with the

administrative law judge or the Administrative Review Board, as appropriate, of his or her intention to file a complaint in federal court, fifteen days in advance of filing such an action. 29 C.F.R. § 1980.114(b).

Here, no decision has been issued within the specified 180 days and, as shown by the above chronology, and I find that the delay was not caused by bad faith of the Complainant. Complainant therefore has a right to file a complaint in federal district court. 18 U.S.C. § 1514A(b)(1); 29 C.F.R. § 1980.114(a). If the Complainant commences an action in federal district court, the Secretary of Labor will no longer have jurisdiction over this action. *See Stone v. Duke Energy Corp.*, 432 F.3d 320 (4th Cir. 2005) (case below 2003-SOX-12). Although some administrative law judges have required that the complainant submit a copy of the complaint filed with the appropriate U.S. District Court before dismissing the action; others have not. *Compare, e.g., Evans v. Liberty Medical Supply, Inc.*, 2007-SOX-22 (ALJ, July 2, 2007) with *Miley v. Emerachem, LLC*, 2007-SOX-31 (ALJ, June 15, 2007). Others have simply closed the file subject to reopening. *E.g., Roberts v. Weatherford International, Ltd.*, 2008-SOX-69 (ALJ Sept. 25, 2008). Based upon Complainant's representations that he intends to file an action in federal district court, this case is being dismissed. In the event that the Complainant fails to file an action in federal district court, any party may move to set aside this Order of Dismissal and reopen these proceedings.

ORDER

IT IS HEREBY ORDERED:

1. The hearing is **CANCELLED**.
2. That the complaint filed by Complainant under the Sarbanes-Oxley Act is **DISMISSED WITHOUT PREJUDICE** to its reinstatement if an action is not filed in federal district court.
3. All pending motions and hearing deadlines are moot.

SO ORDERED

A

DANIEL F. SOLOMON
Administrative Law Judge