

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 02 May 2012

Case Nos. 2011-SOX-45
2011-SOX-5
2012-SOX-4

In the Matter of:
BRYAN D. HIX,
Complainant,

v.

FEDEX CORPORATION/FEDEX SERVICES, et al.
Respondents.

ORDER OF DISMISSAL

These actions arise under the employee-protection provisions of Title VIII of the Sarbanes-Oxley Act of 2002 (SOX), § 806 of the Corporate and Criminal Fraud Accountability Act of 2002 (CCFA), 18 U.S.C. § 1514A.

On March 8, 2012, I issued a stay in the proceeding before me pursuant to the Complainant's stated intention to have the matter removed to federal court. In response to that Order, the Complainant has filed a copy of the first page of the complaint he filed, through his attorney, Tim Snively, in the United States District Court for the Western District of Arkansas, on April 4, 2012. The Complainant did not specifically request dismissal of the present action before the Department of Labor, nor, however, did he indicate that he intended to file anything further as a consequence of his filing a SOX complaint in federal district court.

On April 20, 2012, I issued an Order for both parties to show cause why the present matter should not be dismissed in light of the Complainant's filing of a SOX complaint in federal district court. In that order, I noted that the Complainant apparently was continuing to act *pro se* before me¹ and had not formally moved to have

¹ In a teleconference dated November 21, 2011, the Claimant advised that he had spoken to counsel regarding representation and I advised him that if counsel were to represent him in this matter, he needed to enter an appearance. Tr. 7. To date, even though the Complainant's federal complaint states that it was filed through

the present matter dismissed. Still, I advised the parties that I construed the fact that the Complainant has a SOX complaint currently pending before the federal district court, as well as his stated intent to have the present matter adjudicated in federal court, as the equivalent of a motion to dismiss.² The parties were therefore Ordered to show cause by April 30, 2012, why this matter should not be dismissed.

On April 30, 2012, this Office received from the Respondent its statement that it did not object to the present matter being dismissed in light of the federal filing, and requested all claims be dismissed with prejudice. The Complainant has not filed a response.

Because the Complainant has filed a SOX complaint in the United States District Court for the Western District of Arkansas, and has not responded to my Order to show cause why this matter should not be dismissed in light of his SOX complaint currently pending in the federal district court, his SOX actions before the Department of Labor are **DISMISSED**. Such dismissal before the Department of Labor, however, is without prejudice with regard to his SOX complaint currently pending in federal court.

SO ORDERED.

A

JOHN P. SELLERS, III
Administrative Law Judge

counsel, no attorney has entered an appearance in this matter on behalf of the Complainant, and he continues to file matters *pro se*.

² In the teleconference dated November 20, 2011, the Complainant spoke as if it was his intent to have the entire matter before me removed to federal court. (Tr. 6-7). With only the front page of the federal complaint before me, it is impossible to know whether the federal complaint embraces all the claims before me, but I presume that it does in the absence of any evidence or information to the contrary.