

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 03 March 2011**

Case No.: 2011-SOX-00006

In the Matter of

JIRI PIK,  
Complainant,

v.

CREDIT SUISSE AG,  
Respondent.

**DECISION AND ORDER DISMISSING COMPLAINT**

This matter arises out of a complaint filed by Jiri Pik (Complainant) against Credit Suisse, AG (Respondent) 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. § 1514A (SOX or Act). The Act forbids publicly-traded companies from retaliating against employees who provide information to designated authorities indicating their belief that the employer has violated a rule or regulation of the Securities Exchange Commission or another federal law relating to fraud against shareholders. 18 U.S.C. § 1514(a)(1).

This complaint was filed on August 14, 2010, and was dismissed on October 18, 2010 by the Occupational Safety and Health Administration. The complainant alleged that he suffered a constructive dismissal from his job due to harassment, a personal hate campaign, personal attacks, mobbing and an unbearable working environment caused by two of his superiors, David Werlen and Andreas Luginbuehl. OSHA dismissed the complaint on jurisdictional grounds because SOX does not protect residents of foreign countries employed by foreign companies operating in those countries. Pik v. Goldman Sachs Group, Inc., ARB No. 08-062, ALJ No. 2007-SX-092; Ahluwalia v. ABB, ARB No. 08-008, ALJ No. 2007-SOX-044 (ARB June 30, 2009) pg. 4 and Ede v. The Swatch Group, ARB No. 05-053, ALJ No. 04-SOX-68 and 69 (ARB June 27, 2007). OSHA went on to say:

Assuming as Complainant alleges that his manager was located in New York, Complainant is still not covered. In Carnero v. Boston Scientific Corp., 433 F3rd. 1 (2006) the First Circuit Court of Appeals found that residents of foreign countries employed by foreign companies operating in those countries are not covered by SOX even where that person is subject to “an over-arching employment relationship with the United States parent ... resulting from the

extensive and continuous control ... [defendant's] Massachusetts employees allegedly exercised over his work and duties ... Carnero at 3. This is the situation that Complainant alleges to support his claim of jurisdiction.

The complainant appealed OSHA's decision and the matter was referred to me on February 1, 2011.

On February 18, 2011, I issued an order to show cause why his complaint should not be dismissed because it appears from his complaint that he: 1) is a resident of a foreign country who was employed by a foreign company operating in that country; and 2) has failed to allege that he engaged in any protected activity under employee protection provisions of SOX. His response to the show cause order argues that although he worked exclusively in Switzerland for Credit Suisse, he was essentially based in the New York City office because he was hired by the New York City staff, was supervised by Managers of that office and worked on a New York City based team. He submits that he engaged in protected activity because the team he worked on "does provide the entire Credit Suisse with market data which is then used for producing reports by all Credit Suisse Departments meaning that any intentional inconsistency or omission would propagate on intentionally false numbers reported to the investor of Credit Suisse."

Included with Complainant's original complaint are approximately twenty-two e-mails from and/or to Mr. Pik between June 7, 2010 and his last day of work on July 20, 2010 which he relies upon in establishing his protected activity. What these e-mails and his other documents clearly show is that Mr. Pik, who is a foreign national, worked exclusively in Switzerland for Credit Suisse. The e-mails clearly show that he indeed had on-going work problems with two of his on-site superiors, Messrs. David Werlen and Andreas Luginbuehl. He made numerous complaints about being harassed and undervalued by these individuals but there is absolutely nothing in the record showing that Complainant made any specific complaints to his superiors in either Switzerland or New York City which could be remotely considered protected activity under SOX.

Consequently, I find that Complainant is a resident of a foreign country employed by a foreign company operating in that country and is not covered by SOX. Moreover, Complainant has not shown that he specifically engaged in any protected activity under the employee protection provision of SOX.

Accordingly, IT IS ORDERED that this complaint IS DISMISSED.

**SO ORDERED.**

**A**

DANIEL A. SARNO, JR.  
Administrative Law Judge

DAS/ccb  
Newport News, Virginia

**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, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: [ARB-Correspondence@dol.gov](mailto:ARB-Correspondence@dol.gov)

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.

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party’s supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party’s legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

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).