

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

ALJ NO.: 2011-SOX-00027

KENNETH POLI
Complainant

v.

JACOBS ENGINEERING GROUP
Respondent

Before: Colleen A. Geraghty, Administrative Law Judge

Appearances:

Leonard T. Offut, for the Claimant¹

Marion F. Walker, Esq., Elana Gilaad, Esq., Ford Harrison LLP, for Respondent

**ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DECISION AND
DISMISSING COMPLAINT**

This proceeding arises from a complaint of discrimination filed by Kenneth Poli ("Complainant") against Jacobs Engineering Group ("Jacobs" or "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.A. § 1514A (2006) (the "Act" or "SOX") and the procedural regulations found at 29 C.F.R. Part 1980 (2008). On January 11, 2011, the Regional Administrator for the Occupational Safety and Health Administration ("OSHA"), acting as agent for the Secretary of Labor ("Secretary"), dismissed the Complainant's complaint alleging retaliatory discharge under the Act. On February 22, 2011, the Complainant filed a timely objection to the Secretary's findings with the Office of Administrative Law Judges ("OALJ"). On March 28, 2011, both Complainant and Respondent filed a Motion for Summary Decision

¹ Complainant's representative is a second-year law student.

("C. Mot." and "R. Mot." respectively). To its motion, Respondent appended six exhibits ("RX A – F") and five affidavits, labeled as Certifications ("Cert."). Complainant appended nineteen exhibits ("CX 1 – 19") to his motion.² On April 12, 2011, Respondent filed a Motion to Strike Complainant's Motion for Summary Judgment and/or In Opposition to Complainant Motion for Summary Judgment ("R. Opp."), and Complainant filed his opposition to Respondent's motion ("C. Opp."). One additional exhibit was appended to Respondent's opposition ("Opp. RX A"), and fourteen additional exhibits are appended to Complainant's opposition ("Opp. CX A – N").

I. Undisputed Facts

In ruling on these motions for summary decision, I draw all reasonable inferences in favor of the non-moving party. As I ultimately find the Complainant failed to timely file his complaint, all reasonable factual inferences are drawn in his favor as the non-moving party. My factual determinations are based on the submissions of the parties.³ There are no material facts in dispute with regard to the question of whether his claim was timely filed.⁴ Therefore, the following facts, applicable to the issue of timeliness, are not disputed.

Jacobs provides professional technical consulting services, offering support to industrial, commercial, and government clients. R. Mot., Mangiere Cert. ¶ 2. With regard to its "Project Management Services," Jacobs provides budgeting, consulting, cost estimating/management, materials management, project finance, project management and quality assurance/quality control for its clients." *Id.*

Complainant was hired as a project engineer by Jacobs in April 2006. C. Mot. 3; R. Mot., Reeves-Long Cert. ¶ 2. He worked on several Jacobs projects and in May 2008, he was reassigned to work on Jacobs' project at the Rockland County Psychiatric Center Project ("RCPC"). C. Mot. 3. Part of his duties included screening change orders and reporting any irregularities to his supervisor. C. Mot. 3; R. Mot., Gove Cert. ¶ 3. He was also responsible for reviewing and logging other submissions, bulletins, and sketches, along with a variety of other tasks. *See* R. Mot., Casey Cert., Ex. A at 2.

Jacobs has a Company Convenience Leave ("CCL") Policy which states the Company provides Company Convenience Leave of Absence without pay to eligible employees who are

² Both parties' exhibits are BATES numbered. All page citations herein will be to the BATES number on the page.

³ Jacobs has requested that the Complainant's Motion and Opposition be struck for failing to cite to sworn testimony and for being presented without authentication, foundation and as hearsay. *See* R. Opp. 2-4. This request is denied. Although motions for summary decision are usually accompanied by affidavits and other evidence supporting the factual allegations, I will treat statement made in Poli's brief as admissions of a party. I also note hearsay may be admissible before the OALJ, 29 C.F.R. § 1980.107(d). Additionally, as almost all of the documents submitted in support of the Complainant's memoranda are also submitted by the Respondent, or were produced by the Respondent, the Respondent's request to strike seems to be more of a *pro forma* effort to exclude the Complainant's arguments, rather than any real concern that the exhibits include false or misleading information.

⁴ There are facts material to the merits of the Complainant's claim which may be in dispute.

temporarily without billable work. Opp. CX B. On October 26, 2009, Rena DeRosa in Jacobs' Human Resources department e-mailed the Complainant to inform him that she had been "instructed to prepare a Company Convenience Letter for you . . . for 60 days" R. Mot., RX E at 124. DeRosa then sent the original Company Convenience Leave letter, which said the Complainant would be placed on

Company Convenience Leave of Absence effective **November 2, 2009** with an anticipated return-to-work date of **January 2, 2010**.

* * * *

When your Company Convenience leave ends, every reasonable effort will be made to return you to the same position, if it is available, or to an equivalent position for which you are qualified. However, the Company cannot guarantee reinstatement in all cases. If after your leave expires you do not return to work, the Company will assume you have resigned from your position. . . .

Id. at 121. Upon receipt of the CCL letter, the Complainant e-mailed Rena DeRosa and Rhonda Reeves-Long on October 27, 2009, objecting to the letter's statement that "after company convenience leave has expired and in the event a position is not found, Jacobs assumes I have resigned from my position" and informing them that he was not resigning his position. *Id.* at 123.⁵

Rhonda Reeves-Long, HR Business Partner for Jacobs, replied to Poli's e-mail. She informed Complainant that DeRosa has sent him a revised CCL letter. R.Mot., RX E at 123. The new letter, also dated October 26, 2009, changed the penultimate sentence, which the Complainant had challenged, to say that "the Company will proceed with an involuntary resignation." *Id.* at 126. Reeves-Long also explained the possibilities that existed for employees that are put on CCL:

[They] can be called back to work, find another job outside of Jacobs, find another job within Jacobs[,] or be involuntary terminated. If you find another job outside of Jacobs, you will then voluntarily resign from Jacobs. If you find another job within Jacobs you will be returned from leave as an active employee. If no assignment is identified within the CCL period, you will be involuntarily terminated from Jacobs.

R. Mot., RX E. at 123.

⁵ The Complainant's responding e-mail also requested his comments/response regarding his performance review be included in his file.

The Complainant's CCL began on November 2, 2009. During the period he was on CCL, Complainant attempted to secure a position within Jacobs and he pursued positions with companies other than Jacobs. *See* C. Mot., CX 11. At some point, the Complainant consulted with an attorney, Matthew Hirsch, and Mr. Hirsch faxed a letter on January 5, 2010, asking for an update regarding the Complainant's employment status. C. Opp. CX D. In response to this letter, Rena DeRosa in Human Resources first contacted Vinny Mangiere, division vice president for Jacobs' Project Management Company, a subsidiary of Jacobs Engineering Group, to ask if there was a position available for the Complainant. C. Opp. CX E; R. Mot., Mangiere Cert. ¶ 1. When Mangiere informed DeRosa that no position was available, she sent a letter dated January 5, 2010, saying that "at this time there is no position available. Effective **January 4, 2010**, you will be laid off." C. Opp. CX C. The Complainant filed his complaint with OSHA by letter dated March 24, 2010. R. Mot., RX A.

II. Parties Contentions

Respondent contends the complaint is untimely because the CCL letter sent on October 26, 2009, was unequivocal notice to Poli his employment would be terminated if he did not obtain another position within Jacobs. R. Mot. 14-18. It further asserts that Poli's e-mail correspondence with Rhonda Reeves-Long on October 27, 2009, clarified any questions Poli had regarding his future employment status following his CCL. *Id.* at 14. In support of its position, Respondent relies on the *Ricks-Chardon* rule. *See Delaware State College v. Ricks*, 449 U.S. 250 (1980) (holding the statute of limitations period begins when the employer's alleged adverse action is taken, and not tolled pending "a grievance, or some other method of collateral review of an employment decision"); *Chardon v. Fernandez*, 454 U.S. 6 (1981) (summarily applying *Ricks* to situation where employees were notified by letter of a certain final date of employment); *see also English v. Whitfield*, 858 F.2d 957, 961 (4th Cir. 1988) (applying *Ricks-Chardon* to whistleblower complaint; holding the triggering event is the violation of the law).⁶

Complainant asserts that the CCL cannot constitute final and unequivocal notice of termination because the CCL letter was ambiguous as to what action was going to be taken regarding the Complainant at the end of his CCL. C. Opp. 2-7. Complainant points to language in the letter such as "anticipated return-to-work date," and "involuntary resignation," as support for his argument that the CCL letter is ambiguous. Complainant also argues that when these terms are combined with assurances—to make "every reasonable effort" to return Poli "to the same position" after the "Company Convenience leave ends"—Jacobs created the impression that there remained some decision left unmade until after the CCL had expired. *See id.* at 3-5.

Complainant also argues that the January 5, 2010 letter subsequently "amended, voided, and replaced" the CCL letters. *Id.* at 7-9. As support, Complainant points out that Jacobs' Human Resources took no action immediately after the expiration of his CCL. It was not until

⁶ In addition, Respondent's Motion for Summary Decision seeks summary decision on the merits of the claim.

an attorney sent a letter on the Complainant's behalf that Human Resources e-mailed Mangiere to ask if a position existed for Poli, and only once Mangiere confirmed there was not, did Human Resources issue a letter in which Poli was unequivocally informed he had been laid off as of the previous day. *Id.* at 8. Complainant contends that only this notice altered his employment contract with Jacobs, and it should therefore be seen as "effectively void[ing] and replac[ing] the date contained in the CCL letter." *Id.*

III. Discussion

A. Standard of Review for Summary Decision

The standard for granting summary judgment or decision set forth at 20 C.F.R. §18.40(d) is derived from Federal Rules of Civil Procedure 56.⁷ Section 18.40(d) permits an Administrative Law Judge to enter summary decision, "if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show there is no genuine issue as to any material fact and that a party is entitled to summary decision." 20 C.F.R. §18.40(d) (1994). A material fact is one whose existence affects the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Snyder v. Wyeth Pharmaceuticals*, ARB No. 09-008, ALJ No. 2008-SOX-055, slip op. at 5 (ARB April 30, 2009). And, a genuine issue exists when the non-movant produces sufficient evidence of a material fact so that a fact finder is required to resolve the parties' differing versions at trial. *Anderson*, 477 U.S. at 249.

In deciding a Rule 56 motion for summary decision, the Court must consider all the material submitted by both parties, drawing all reasonable inferences in a manner most favorable to the non-movant. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-159 (1970). In other words, the Court must look at the record as a whole and determine whether a fact-finder could rule in the non-movant's favor. *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The movant has the burden of production to prove that the non-movant cannot make a showing sufficient to establish an essential element of the case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the movant has met its burden of production, the non-movant must show by evidence beyond the pleadings themselves that there is a genuine issue of material fact. *Id.* at 324. If the non-movant fails to sufficiently show an essential element of his case, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the non-movant's case necessarily renders all other facts immaterial." *Id.* at 322-323.

⁷ Rule 56(c) provides that summary decision shall be rendered "if the pleadings, depositions, answers to interrogatories, admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. Proc. 56(c).

B. Sarbanes Oxley - Statute of Limitations

The SOX whistleblower provision prohibits retaliation by publicly traded companies against their employees who provide information to a supervisory employee, a federal agency, or Congress, alleging violation of federal law relating to fraud against shareholders. 18 U.S.C. § 1514A(a), 29 C.F.R. § 1980.102(b). To state a claim under the employee-protection provisions of the Act, a complainant must allege that: (1) he engaged in a protected activity; (2) the respondent knew that he engaged in the protected activity; (3) the complainant suffered an unfavorable personnel action, i.e., an adverse employment action; and (4) the protected activity was a contributing factor in the unfavorable action. *Harvey v. Home Depot*, ARB Nos. 04-114, 115, ALJ Nos. 2004-SOX-020, 036, slip op. at 10 (ARB June 2, 2006); *Getman v. Southwest Securities, Inc.*, ARB No. 04-059, ALJ No. 2003-SOX-8, slip op. at 8 (ARB July 29, 2005).

At the time the events at issue occurred, SOX section 1514A(b)(2)(D) provided that an action shall be commenced not later than 90 days after the date on which the violation occurs. 18 U.S.C. § 1514A(b)(2)(D).⁸ The implementing regulation for this statutory provision, 29 C.F.R. § 1980.103(d) provided:

(d) Time for Filing. Within 90 days after an alleged violation of the Act occurs (i.e., when the discriminatory decision has been both made and communicated to the complainant), and employee who believes that he or she has been discriminated against in violation of the Act may file...a complaint alleging such discrimination.

In explaining the regulation, the Department of Labor stated:

[T]he alleged violation...is considered to be when the discriminatory decision has been both made and communicated to the complainant. In other words, the limitations period [i.e., the 90 days] commences once the employee is aware or reasonably should be aware of the employer's decision.

69 Fed. Reg. No. 163, p. 52106 (August 24, 2004) (citing *Delaware State College v. Ricks*, 449 U.S. 250, 258 (1980)). There is no dispute that the complaint was filed on March 25, 2010. Thus, the whistleblower violation complained of must have occurred in the 90 days before the filing, or no earlier than December 24, 2009.

The Supreme Court has addressed the statutes of limitation in discrimination cases. In *Ricks*, the Supreme Court held that a Title VII claim alleging unlawful denial of tenure was untimely as it was not filed within the limitations period following the date the tenure decision was made and communicated to the employee even though the effect of the denial of tenure decision, that is, the loss of a teaching position did not occur until later. 449 U.S. at 258. The Court held a grievance procedure or other method of collateral review of an employment

⁸ Sections 922(b) and (c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 (July 21, 2010), amended Section 806 of the Corporate and Criminal Fraud Accountability Act, Title VIII of the Sarbanes Oxley Act, 18 U.S.C. 1515A to lengthen the time for filing a complaint to 180 days.

decision does not toll the running of the limitations periods. *Id.* at 261. In *Chardon v. Fernandez*, 454 U.S. 6 (1981), a 1983 claim, the Court reiterated its view that “the proper focus is on the time of the *discriminatory* act, not the point at which the *consequences* of the act become painful.” 454 U.S. at 8 (emphasis in original). The Fourth Circuit applied the *Ricks-Chardon* rule in *English v. Whitfield*, 858 F.2d 957(4th Cir. 1998), a case arising under the Energy Reorganization Act of 1974. The Fourth Circuit held that the Complainant’s claim of retaliation was untimely as it was not filed within 30 days. The Fourth Circuit rejected Complainant’s argument that a letter she received from the Company on May 15, 1984, was ambiguous and did not provide clear notice of termination. The letter informed English that she was on temporary assignment for 90 days and that if she did not find an alternate permanent position with the company by the end of the temporary assignment, she was to be placed on lack of suitable work status-essentially placed on lay-off. In determining English’s complaint was untimely, the Court held the May 15 letter was final and unequivocal, and it did not intimate that the “decision was subject to further appeal, review, or revocation.” *Id.* at 961-62. The Fourth Circuit held:

The only uncertainty in the notice related to a possibility of avoidance of the consequences of the decision by means unrelated to its revocation or reexamination by the employer. . . . But the possibility that the effect(s) of a challenged decision might be avoided by such means, does not render the decision equivocal for the purposes here at issue, at least where, as here, the effect can be avoided without negating the alleged discriminatory decision itself.

Id. at 962.

The Department of Labor’s Administrative Review Board (ARB) has followed these precedents and held that statutes of limitation in whistleblower cases, including the limitations period in section 1514A(b)(2)(D) of SOX, runs “from the date the employee receives ‘final, definitive, an unequivocal notice’ of an adverse employment decision.” *Snyder*, slip op. at 6. The ARB instructed that “‘Final’ and ‘definitive’ notice is a communication that is decisive or conclusive, i.e., leaving no further chance for action, discussion, or change. ‘Unequivocal’ notice means communication that is not ambiguous, i.e., free of misleading possibilities.” *Id.* (citations omitted). In *Snyder*, the Complainant had been suspended with pay pending the outcome of an investigation into whether he had improperly accessed a confidential system. While suspended, the Complainant sent an e-mail to the Respondent alleging that company officials had committed Code of Conduct violations. *Id.* at 2. The Director of HR responded in an October 2007 letter informing the Complainant that prior to receiving the e-mail, the company had decided to terminate the Complainant's employment, but also informing the Complainant that the HR Director would entertain evidence addressing the behavior which the company found objectionable or information as to why the Complainant thought the termination was not justified. *Id.* at 2-3. The Complainant responded. Several months later the company informed Synder that the investigation did not support his claims and the Company was going ahead with

its decision to terminate his employment. *Id.* at 4. The ARB held that unlike the formal grievance procedure at issue in *Ricks*, the HR Director's letter

carried none of the indicia of a formal collateral procedure to remedy a final decision. Instead, it injected an element of ambiguity into the transaction and an opportunity for further action, discussion, or change. Thus, the letter did not constitute final, definitive, and unequivocal notice of the termination of Snyder's employment sufficient to commence the running of the limitations period.

Id. at 8.

In *Rollins, v. American Airlines*, ARB No. 04-140, ALJ No. 2004-AIR-009, slip op. at 2 (ARB Apr. 3, 2007) (re-issued) *aff'd* 311 Fed.Appx. 85 (10th Cir. April 3, 2008), the Complainant received an advisory letter providing three choices: (1) commit to comply with the Respondent's rules and regulations (including satisfactory work performance and personal conduct) and accept reassignment, (2) voluntarily resign with transitional benefits and agree not to file a grievance, or (3) accept termination with grievance options. *Rollins*, slip op. at 3. Rollins informed the company he would not agree to any of the choices. The ARB held that the advisory letter provided final and unequivocal notice to the Complainant that the Respondent had decided to terminate his employment, and the possibility that the Complainant could have avoided the effects of the advisory letter by resigning voluntarily or accepting employment in another division did not negate the effect of the advisory letter's notification of intent to terminate the Complainant's employment. *Id.* at 4.

Halpern v. XL Capital, Ltd., ARB No. 04-120, ALJ No. 2004-SOX-054, slip op. at 3 (ARB Aug. 31, 2005), involved a Complainant that was suspended. The Complainant knew on the date of his suspension that he was going to be fired. *Id.* at 2. The record, however, also contained an e-mail to Complainant, dated a few weeks after the suspension, from the General Counsel for the Respondent's parent company which suggested that a final decision had not been made on the Complainant's employment status. *Id.* The ARB found that the General Counsel's e-mail cast doubt on whether Complainant had received final, definitive and unequivocal notice regarding his employment status. *Id.* at 4. The ARB held that the limitations period began to run on the date on which the Complainant was later informed verbally and in writing that he had been fired. *Id.*; see also *Jenkins v. United States Env'tl. Prot. Agency*, ARB No. 98-146, ALJ No. 1988-SWD-002, slip op. at 14 (ARB Feb. 28, 2003).

Poli contends that the limitations period did not begin to run until January 6, 2010, when he received unequivocal notice of termination via a letter from Jacobs' Human Resources Rena DeRosa, dated January 5, 2010.⁹ Poli argues that the October 26, 2009 letter he received

⁹ Poli has made statements giving different dates as to when the statute of limitations begins to run. In his response to Respondent's submission to OSHA, Poli contends the statute of limitations began to run on January 6, 2010, when he received a letter from Ms. DeRosa in HR telling him no position was available and that effective January 4, 2010, you will be laid off. R. Mot., RX B at 9. In his opposition to Respondents' motion for summary decision, Complainant states his claim is timely "because he received 'final an unequivocal' notice of termination within three business days of a letter sent by Jacobs, dated January 5, 2010, informing him that '[e]ffective January 4, 2010, you

informing him that he was being placed on Company Convenience Leave of Absence (CCL) did not provide unambiguous, final, definitive and unequivocal notice of termination. Respondent asserts that its communications with Poli in both the CCL letter on October 26, 2009, and in an e-mail the next day provided the required notice that a final and unequivocal determination as to his employment status had been made, triggering the running of the limitations period for filing a complaint under SOX.

I am guided by the principles discussed above in determining whether Poli received final, definitive, and unequivocal notice his employment would be terminated. The first sentence of the October 26, 2009, CCL letter Poli received, states he will be placed on Company Convenience Leave of Absence effective November 2, 2009 “with an anticipated return-to-work date of January 2, 2010.” R. Mot., RX E at 121. This sentence provides an anticipated return-to-work date, it does not indicate or suggest a termination date. In this regard the language of the CCL letter is ambiguous. The letter concludes by stating

[w]hen your Company Convenience leave ends, every reasonable effort will be made to return you to the same position, if it is available, or to an equivalent position for which you are qualified. However, the Company cannot guarantee reinstatement in all cases. If after your leave expires you do not return to work, the Company will assume you have resigned from your position.

Id. On its face, the statement that “[w]hen your Company Convenience leave ends, every reasonable effort will be made to return you to the same position, . . . or an equivalent position” is misleading as one impression that can be drawn is that any final decision on his employment status will be made at the conclusion of the CCL.

However, Poli’s reliance on this portion of the CCL letter to support his argument that the letter informed him that any final determination of his employment status would occur after his CCL ended on January 2, 2010, and that the letter did not inform him that his employment was terminated, ignores the e-mail exchange with Jacobs’ HR officials.¹⁰ In an e-mail exchange on October 27, 2009, with Rhonda Reeves-Long and Rena DeRosa, from the Human Resources department, in response to the first CCL letter, Complainant’s e-mail makes reference to the statement in the CCL “that after the [CCL] has expired and in the event a position is not found, Jacobs assumes I have resigned from my position” and informs them “[o]n the record, I am not resigning my position” R. Mot., RX E at 123. Reeves-Long’s e-mail response indicated a revised CCL letter was sent to him,¹¹ and more importantly, she explained the possible outcomes for employees placed on CCL: be called back to work, find another job outside Jacobs, find

will be laid off.” C. Opp. 2. As Poli has represented that he received the DeRosa’s letter dated January 5 on January 6, 2010, that is the date I will apply to his argument for purposes of the statute of limitations issue.

¹⁰ Poli does not address the effect of the e-mail in his opposition to Respondent’s motion for summary decision.

¹¹ The second or revised CCL letter dated October 26, 2010, changed the language to which Poli had complained. The revised CCL letter stated, “If after your leave expires no position is available, the Company will proceed with an involuntary resignation.” Opp. CX A.

another job within Jacobs, or be involuntarily terminated.¹² She explicitly informed Complainant that “if no assignment is identified within the CCL period, you will be involuntarily terminated from Jacobs.” *Id.* Reeves-Long’s e-mail to Poli provided final and unequivocal notice that if no position was identified for him at Jacobs within the CCL period, he would be terminated. To the extent that the CCL letter by itself, was ambiguous, any ambiguity was resolved by the e-mail Poli received from HR’s Ms. Reeves-Long on October 27, 2009.

Poli argues in the alternative, that even if the CCL letter is found to provide final, definitive and unambiguous notice of termination, Jacobs subsequently amended, voided and replaced the CCL with its letter dated January 5, 2010, informing Complainant that “at this time there is no position available. Effective January 4, 2010, you will be laid off.” Opp. CX C. I note that January 2, 2010 the date provided in the CCL letter was a Saturday. January 4, 2010, the effective date provided in the January 5, 2010, letter which confirmed no position was available and that the layoff would be effective, was a Monday. The change in effective date from a Saturday to the following Monday, the start of a work week, does not nullify the communications Poli received from Jacobs as to his employment status if no position was identified for him within Jacobs during the period he was placed on Company Convenience Leave.

The communications Poli received from Jacobs in CCL letter and e-mail from HR the next day are analogous to the letters in question in *English* and *Rollins*. Similar to the communications at issue in those cases, Jacobs’ decision on Complainant’s employment status was not subject to appeal or review. The only uncertainty in the CCL letter and e-mail exchange with HR was the possibility of avoiding the harshest consequences, termination or lay-off, by Poli’s obtaining another job within Jacobs.¹³ For the reasons discussed, Complainant had final, definitive, and unequivocal notice no later than October 27, 2009, that his employment with Jacobs would be terminated unless he obtained a position on another Jacobs’ project during the period he was on CCL. The limitations period began to run on October 27, 2010. Complainant’s effort to obtain another position with Jacobs was unsuccessful, and he was laid off/terminated when his CCL ended. As Complainant’s complaint was not filed until March 25, 2010, the complaint is untimely.¹⁴

¹² When he received the CCL letter on October 26, 2009, Poli understood that he was unlikely to be called back to work at his job at RCPC, as that project was coming to a close. R. Mot., RX Curtis Cert. ¶ 28; Mangiere Cert. ¶ 5; Gove Cert. ¶ 6-8.

¹³ Unlike the situation presented in *Synder*, Jacobs did not inform Complainant that he could submit information which could alter the company’s decision on his employment status.

¹⁴ The parties’ motions also seek summary decision on the merits of the claim. In light of the determination that the complaint is not timely, I do not consider the parties’ additional arguments in support of summary decision.

ORDER

For the foregoing reasons, the complaint is DISMISSED as untimely.

SO ORDERED.

A

COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts