



Issue Date: 06 September 2012

CASE NO. 2012-SOX-00026

In the Matter of:

HWALIN CHENG,
Complainant,

V.

WORLDWIDE ENERGY & MANUFACTURING USA, INC.,
Respondent

ORDER DISMISSING COMPLAINT WITH PREJUDICE

On May 7, 2010, Complainant filed a complaint with the Department of Labor Occupational Safety and Health Administration (herein "OSHA") under the employee protective provisions of SOX, alleging that Respondent's termination of her employment violated the Whistleblower Protection provisions of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A. The Secretary of Labor through her agent, OSHA investigated the complaint and issued a report dismissing the complaint for failure to cooperate as the parties refused to change certain language in the settlement agreement between the parties pertaining to whether Complainant retained her rights to pursue further protected activity and to cooperate with any government investigations pertaining to her complaint. Complainant filed a request for hearing with the undersigned on July 2, 2012, regarding the OSHA determination and the undersigned issued an order scheduling the hearing for September 5, 2012.

The undersigned has discovered that Complainant has filed a civil action against her Employer on May 3, 2012, captioned "Hwalin Cheng v, Worldwide Energy and Manufacturing Inc.; Littler Mendelson, PC; and Jeff Watson and Eugene Ryu, individually" Civil Action No. C-12-02233 in the U.S. District Court for the Northern District of California. Further court records show that this action was dismissed with prejudice by U.S. District Court Judge Charles R. Breyer on June 1, 2012, apparently on the basis of a joint stipulation by the parties requesting dismissal due to settlement.

If the Department has not issued a final decision within 180 days of the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy. 29 C.F.R. § 1980.114(a). Once Complainant has elected to pursue his SOX claim in United States District Court, the undersigned loses his

jurisdiction over the instant claim. *See Mazingo v. The South Financial Group, Inc.*, ARB Case No. 07-040 (ARB February 8, 2007); *Mullins v FPL Energy, LLC*, 2007-SOX-00061 (DOL ALJ August 30, 2007); *Dauzat v. Crawford & Co.*, 2007-SOX-00057 (DOL ALJ August 12, 2008).

Complainant in this matter apparently filed her claim in United States District Court. Complainant further waited 180 days before filing her claim in District Court. As Complainant has adequately filed in District Court, a dismissal of the claim with the undersigned appears to be in order as the undersigned no longer has jurisdiction over the matter. Furthermore the court documents indicate that the matter has been dismissed by the court with jurisdiction over the claim with prejudice due to settlement.

The Complainant was **ORDERED TO SHOW CAUSE** why this matter should not be dismissed with prejudice. Complainant filed a Response to said Order to Show Cause on September 4, 2012. While Complainant argues her case at length in the Reply, she does not refute any of the pertinent facts recited hereinabove which clearly show that the undersigned has no jurisdiction over this claim.

Accordingly, the Complaint is hereby **DISMISSED** with prejudice.

RUSSELL D. PULVER
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, 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.

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).