

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 26 September 2012**

Case Number: 2012-SOX-00023

In the Matter of:

JOHN J. CULLEN,  
Complainant,

v.

CITIGROUP,  
Respondent.

Appearances: John J. Cullen, *Pro Se*  
Eastchester, New York  
For the Complainant

Jeremy P. Blumenfeld, Esq.  
Melissa R. Kelly, Esq.  
Morgan, Lewis & Bockius  
Philadelphia, Pennsylvania  
New York, New York  
For the Respondent

**DECISION AND ORDER**  
**DISMISSING THE COMPLAINT**

***Background***

John J. Cullen (hereinafter “Complainant” or “Mr. Cullen”), alleges a violation of the employee protection provisions in Section 806 of the Sarbanes-Oxley Act of 2002, codified at 18 U.S.C. § 1514A (“SOX” or “the Act”), and applicable regulations issued at 29 C.F.R. Part 1980 (2010). Section 806 generally prohibits company retaliation for lawful cooperation with investigations and protects employees who suffer an adverse action for reporting allegations of financial fraud. The Act extends protection to employees of any company “with a class of

securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781) or that is required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 780(d))....” SOX complainants are governed by the legal burdens of proof set forth in the employee protection provision of the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (AIR 21), 49 U.S.C.A. § 42121. A complainant alleging a violation of Section 806 must prove by a preponderance of the evidence: (1) that he engaged in protected activity or conduct; (2) that he suffered an adverse personnel action; and (3) that the protected activity was a contributing factor in the unfavorable action. *See, e.g., Villanueva v. Core Laboratories*, ARB 09-108, ALJ No. 2009-SOX-006, at 8 (ARB Dec 21, 2011).

### ***Procedural History***

On March 22, 2012, Mr. Cullen filed a formal complaint with the U.S. Department of Labor (“DOL”), Occupational Safety and Health Administration (“OSHA”) under Section 806 of the Sarbanes-Oxley Act of 2002, alleging that his former employer, Citigroup (“Respondent”), retaliated against him in violation of the Act by terminating his employment because he continually raised concerns about management issues related to Citigroup-administered trusts. After conducting an investigation, the Regional Administrator for OSHA’s New York Regional Office issued a final determination letter on April 11, 2012. OSHA held that, according to the evidence, Mr. Cullen received his notice of termination on November 27, 2007.<sup>1</sup> In the Secretary’s Findings, OSHA determined that Mr. Cullen had not filed within the statutory timeframe and dismissed his complaint. (ALJ Exhibit (“ALJX”) 1).

On May 8, 2012, the Office of Administrative Law Judges received a copy of an email from Mr. Cullen, dated May 5, 2012, in which he “accept[ed] the DOL 4/11/12 invitation to testify in the D.C. hearing.”<sup>2</sup> (ALJX2). Mr. Cullen’s case was then assigned to me on May 11, 2012. On May 16, 2012, I issued a Notice of Docketing and Order to Show Cause advising the parties that I would consider the timeliness of Mr. Cullen’s complaint as a preliminary matter and directed the parties to explain why Complainant’s case should not be dismissed as untimely under the Act. (ALJX3). Both parties responded in writing and, from those responses, there appeared to be a dispute as to a material fact, namely when and how Complainant first complained of alleged retaliatory action. (ALJX4 and ALJX5). Therefore, following notice to the parties, I held a preliminary hearing on August 2, 2012 in Washington, D.C. The preliminary hearing was limited to the issue of the timeliness of Mr. Cullen’s SOX complaint. (ALJX6). At the hearing, I admitted the following exhibits: ALJX 1-13, Complainant’s Exhibits (“CX”) 1-3 and Respondent’s Exhibits (“RX”) 1-33. The Complainant was the only person to testify.

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<sup>1</sup> While Complainant submits he did not receive notice of termination until November 28, 2007, the additional day does not affect the relevant legal issues.

<sup>2</sup> Complainant, representing himself, appears to be referring to the section of the Regional Administrator’s letter informing Complainant of his right to file objections to the Secretary’s Findings and to request a hearing before an Administrative Law Judge within 30 days of receipt of the letter. Though Mr. Cullen’s May 5, 2012 correspondence to this office did not indicate specific disagreement with the decision to dismiss the complaint or include a request for a formal hearing, I treated the email as an objection to the Secretary’s Findings and request for a hearing before an Administrative Law Judge (“ALJ”), pursuant to 29 C.F.R. §1980.106.

Respondent argues that Complainant is estopped from proceeding with this case because the timeliness of his SOX complaint was previously ruled on by a federal district court judge. For the reasons set forth below, I need not resolve that argument here, because, even if Mr. Cullen is not precluded from litigating the issue before this court, I find that his complaint was not filed within the timeframe provided by the Act and must be dismissed.

### *Essential Findings of Fact and Conclusions of Law*

#### A. Coverage of the Parties

Upon review of the record, I find that Respondent Citigroup is a company “with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781) or that is required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 780(d))....” 18 U.S.C. § 1514A(a). Complainant was an employee of Respondent within the meaning of 18 U.S.C. § 1514A(a) and 29 C.F.R. Part 1980.101(g) until January 28, 2008.<sup>3</sup>

#### B. Summary of the Evidence

##### 1. Complainant’s Initial Communications with the Department of Labor

In February 2007, Mr. Cullen contacted Marie Abaun at the U.S. Department of Labor, Employee Benefits Security Administration (“EBSA”) to discuss his belief that his former employer, Bank of New York, miscalculated his pension and violated various banking regulations. (CX1). Mr. Cullen testified that he spoke with Ms. Abaun several times in 2007, primarily regarding his claims against Bank of New York, but also regarding his belief that Citigroup had mismanaged his clients’ trusts. (Preliminary Hearing Transcript (“Tr.”) at 47-51). On November 26, 2007, Mr. Cullen wrote to Ms. Abaun requesting assistance with several issues regarding his Bank of New York pension, but did not reference any concerns regarding Citigroup’s trust management practices. (CX2). At the hearing, Mr. Cullen testified that he spoke with Ms. Abaun again in mid-December 2007, and told her about his forthcoming discharge from Citigroup, and that he planned to ask the New York State Attorney General to investigate Citigroup’s mismanagement of trust accounts. (Tr. at 164). In response to the court’s questions, Mr. Cullen indicated that he believed that this conversation was the first time that he told a government agent that Citigroup had retaliated against him for raising trust management issues. (Tr. at 166). However, Mr. Cullen also testified that the substance of his conversations with Ms. Abaun focused predominantly on his criticism of Citigroup’s trust management practices, and that his primary concern was not his own employment circumstances, but rather the monetary interests of his former clients. (Tr. at 165-66, 177). Of his written correspondences to Ms. Abaun in the record, the earliest instance that Mr. Cullen alleges that Citigroup fired him for “trying to report wrongdoing” is an e-mail dated July 26, 2009. (RX5; Tr. at 135-36).

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<sup>3</sup> Respondent hired Mr. Cullen as a “Vice President and Trust Officer” on November 7, 1994. (ALJX 4 at 1). On numerous occasions during his employment, Mr. Cullen brought to his supervisors’ attention what he perceived to be gross mismanagement of Citigroup-managed trust accounts, including one pertaining to the late-heiress Huguette Clark. (ALJX 7). Mr. Cullen’s working relationship with his supervisors deteriorated over the years and, on November 28, 2007, Respondent notified Complainant that he would be discharged, with an effective date of termination of January 28, 2008. (RX2).

2. Complainant's Communications with the State of New York Office of the Attorney General

On December 27, 2007, Complainant met with Robert Molic and Carl Distefano, investigators with the State of New York Office of the Attorney General's Charities Bureau, and asked them to investigate Citigroup's mismanagement of his clients' trust accounts. (CX1; CX3). However, Mr. Cullen testified that he did not complain to Messrs. Molic and Distefano at this meeting that Citigroup took illegal retaliatory action against him. (Tr. at 121).

3. Complainant's New York State Court and U.S. District Court Claims

Mr. Cullen filed three complaints in New York State Court in November and December of 2008 seeking correction of pension benefits, correction of severance benefits, and resolution of a credit card dispute, two of which were subsequently removed by Citigroup to federal district court. (*See* ALJX5 at 5-6; AJX12 at 2). On May 18, 2009, Mr. Cullen filed an amended complaint with the district court, which included a SOX retaliation claim. (ALJX12 at 8-10). Because Mr. Cullen did not allege in the pleadings that he previously filed a SOX retaliation claim with OSHA, Judge Kenneth M. Karas of the United States District Court for the Southern District of New York dismissed the complaint without prejudice on September 30, 2010 for failure to exhaust administrative remedies. (RX17 at 7). *See* 18 U.S.C. § 1514A(b)(1)(A).

Prior to ordering dismissal, the district court held a pre-motion conference on July 10, 2009 in anticipation of Citigroup's Motion to Dismiss Mr. Cullen's complaint, at which Judge Karas asked Mr. Cullen to address whether he had previously filed a SOX complaint with OSHA:

THE COURT: Sarbanes-Oxley. Mr. Blumenfeld says you've got to file an administrative complaint to the Secretary of Labor and you never did and it's too late now. Why is that wrong?

MR. CULLEN: I'm saying the watch list was set up under Sarbanes Huxley, your Honor. My complaint is set up against the bank and its policy.

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THE COURT: If you are seeking relief under Sarbanes-Oxley, there's an administrative exhaustion requirement that Mr. Blumenfeld says you haven't met. If your opinion is that there are really two pieces to this, I accept that. But as to the Sarbanes-Oxley piece of it, it may very well be that you are administratively, you have not administratively exhausted, so this claim would not be allowed to proceed. Do you understand what I'm saying?

MR. CULLEN: I understand what you're saying. That's the penalty of being pro se.

(AJX 12 at 3; RX4 at 8-10). After the conference, the district court gave Mr. Cullen thirty days to amend his complaint and address its deficiencies, including the failure to allege that he previously filed a SOX retaliation complaint with the Department of Labor. (RX4 at 18-19). However, when Mr. Cullen filed an amended complaint on August 10, 2009, he again failed to allege that he had filed with the Department of Labor, prompting the court to dismiss his complaint without prejudice on September 30, 2010. (RX7; RX17 at 7).

When Mr. Cullen expressed his intent to file another amended complaint in May 2011, Judge Karas issued an order to show cause, instructing Mr. Cullen to demonstrate why this amended complaint should not be dismissed. (RX22). Mr. Cullen's responses to the court were unconvincing, as he again failed to address the defects identified in his previously-dismissed complaint, including his failure to plead that he filed a SOX complaint with the Department of Labor. (RX25). Consequently, Judge Karas ordered judgment for Citigroup and closed the case. (RX26). Not until March 22, 2012, did Mr. Cullen file a formal, written complaint with OSHA under Section 806 of the Sarbanes-Oxley Act of 2002. (AJX 1 at 3).

In sum, Mr. Cullen had multiple opportunities to assert that he filed or attempted to file a retaliation complaint with a government agency prior to filing in United States District Court. Even when asked specifically by Judge Karas whether he had previously filed a retaliation complaint with the Secretary of Labor, Mr. Cullen did not mention his communications with Ms. Abaun, nor did he reveal his meeting with investigators with the State of New York Office of Attorney General. Mr. Cullen's failure to satisfactorily address the administrative exhaustion requirement during the federal district court proceedings is strong circumstantial evidence that he did not actually complain about a retaliatory personnel or employment action to a government agency prior to his July 29, 2009 email to EBSA-employee Marie Abaun.

As discussed further below, I find that Mr. Cullen made no oral or written complaint to any U.S. Department of Labor agent or agency between November 28, 2007 and February 26, 2008 alleging that Citigroup or one of its subsidiaries took retaliatory action against him for raising concerns regarding trust account mismanagement.

## C. Discussion

### 1. Respondent's Motion for Judgment on Issue Preclusion Grounds

On August 1, 2012, Respondent filed a Motion for Judgment In Favor of Citigroup On Issue Preclusion Grounds. (ALJX12). Issue preclusion provides that a court's final decision on an issue actually litigated and necessarily decided in a previous suit is conclusive on that issue in a subsequent suit. *Frank v. United Airlines, Inc.*, 216 F.3d 845, 850 n.4 (9th Cir. 2000). Issue preclusion, frequently referred to as collateral estoppel, would bar Mr. Cullen from litigating an issue that has already been decided in a former proceeding when there is identity of parties, identity of issues between the former and subsequent proceedings, and when the party opposing collateral judgment had a full and fair opportunity to litigate the issue at the prior proceeding. *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 (9th Cir. 2006).

Citigroup argues that Judge Karas dismissed Mr. Cullen's complaint on both Federal Rule of Civil Procedure (FRCP) 12(b)(1) grounds (lack of subject matter jurisdiction) and 12(b)(6) grounds (failure to state a claim), and, in doing so, made a specific finding that Mr. Cullen did not make a timely SOX complaint with the Department of Labor. (ALJX12). In support of this argument, Citigroup cites the above-quoted excerpt from the July 10, 2009 pre-motion conference, wherein Judge Karas asks Mr. Cullen to address Respondent's contention that he failed to make a timely filing with the Secretary of Labor. (*Supra*, p. 3; ALJX12 at 3). Citigroup asserts in its motion that the district court dismissed Mr. Cullen's SOX claim on September 30, 2010, and eventually entered judgment for Citigroup on September 30, 2011, because "Mr. Cullen had not timely filed a complaint with the Department of Labor," and therefore the court "found that it lacked jurisdiction over Mr. Cullen's SOX claim." (ALJX12 at 4, 6, 7). Citigroup contends that, because the court's dismissal of the SOX claim amounts to a jurisdictional ruling based on Mr. Cullen's failure to file a timely administrative complaint, Mr. Cullen is precluded from relitigating the timeliness issue before this Court. (ALJX12 at 7).

However, upon closer examination of the record, this court disagrees with Citigroup's characterization of the district court's dismissal of Mr. Cullen's SOX claim. Although Citigroup argued in its September 11, 2009 Motion to Dismiss before Judge Karas that Mr. Cullen's SOX claim "fails as a matter of law," Citigroup brought the motion "pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure." (RX12 at 7, 9-10). Consequently, the district court applied a FRCP 12(b)(6) standard of review to all of the claims before it, including the SOX claim. (RX17 at 4-6). When reviewing the SOX claim, the court stated that if "the employee fails to follow [the] administrative requirements, or plead that he did so,...the court lacks jurisdiction." (RX17 at 7). The court ultimately granted Citigroup's motion pursuant to Rule 12(b)(6) and dismissed Mr. Cullen's SOX claim without prejudice because "Cullen ha[d] not *pled* this requisite jurisdictional step." (RX17 at 2, 7) (emphasis added). So while the district court viewed exhaustion of administrative remedies as a necessary predicate for it to have jurisdiction to address the merits of Mr. Cullen's SOX claim, the court actually dismissed because Mr. Cullen failed to satisfy minimum pleading standards. Notably, there is no mention of FRCP Rule 12(b)(1) in the district court's order, nor did the court make a specific finding, or even infer, that Mr. Cullen would be precluded from filing a complaint with the Department of Labor. In other words, the court's September 30, 2010 Order suggests only that it viewed Mr. Cullen's SOX *pleadings* insufficient to trigger the court's jurisdiction, prompting the subsequent dismissal without prejudice to allow Mr. Cullen an opportunity to cure the deficiencies.

Additionally, when the court entered judgment for Citigroup on September 30, 2011, it did not dismiss for lack of jurisdiction, nor did it make a finding as to whether Mr. Cullen actually made a timely filing with the Department of Labor prior to filing in district court. Rather, upon receiving notice that Mr. Cullen intended to file an amended complaint, the court issued an order directing Mr. Cullen to first show cause as to why his new complaint should not be dismissed. (RX22). As Mr. Cullen's response raised substantially similar claims to those dismissed in the September 30, 2010 Order, and failed to address the exhaustion of administrative remedies defect, the court entered judgment for Citigroup and closed the case. (RX26). From the evidence in the record, it appears that Judge Karas ultimately entered judgment for Citigroup because Mr. Cullen consistently failed to address the defects in his pleadings. Accordingly, as it does not appear that the court definitively ruled that Mr. Cullen did

not make a timely filing with the Department of Labor, he is not precluded from litigating the timeliness issue here. That said, I find that Mr. Cullen still loses on the merits, as he has failed to demonstrate that he filed his SOX complaint with OSHA within the statutory filing period, or that the circumstances warrant equitable tolling.

## 2. Complainant's Complaint is Untimely

Under the statute and applicable regulations then in effect, a SOX complaint must be filed not later than 90 days after the date that an alleged violation of the Act occurs, or after the date on which the employee became aware of the violation.<sup>4</sup> 18 U.S.C. § 1514A(b)(2); 29 C.F.R. § 1980.103(d). Thus, an employer violates SOX on the day that it communicates to the employee its intent to take an adverse employment action, rather than the date on which the employee experiences the adverse consequences of the employer's action. *Overall v. Tennessee Valley Authority*, ARB Nos. 98-111, ALJ No. 1997-ERA-00053 (ARB April 30, 2001).

Mr. Cullen alleges in his March 22, 2012 SOX complaint that he was terminated by Citibank in retaliation for complaining about violations of securities laws related to the bank's mismanagement of several large trust accounts. In other words, Mr. Cullen submits that he suffered illegal adverse action when Citigroup removed him from his job as Vice President and Trust Officer because he reported financial fraud and negligence related to Citibank-managed trust accounts.<sup>5</sup> Mr. Cullen concedes that he was provided notice of termination on November 28, 2007, with an effective date of January 28, 2008. OSHA's New York Regional Office received Mr. Cullen's SOX complaint on March 22, 2012, more than 90 days after he received notice of his termination.

SOX's 90-day filing period may be equitably tolled for extenuating circumstances, including concealment by the employer of the existence of the adverse action, inability of the plaintiff to file within the statutory time period due to extraordinary events, such as a debilitating illness, injury or natural disaster, or mistakenly filing an otherwise timely complaint regarding the same statutory claim with another agency.<sup>6</sup> See *School Dist. of City of Allentown v. Marshall*, 657 F.2d 16, 19-20 (3rd Cir. 1981). Mr. Cullen has not alleged concealment, injury, or any other extraordinary circumstance that prevented him from filing a timely complaint.

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<sup>4</sup> Among other amendments to SOX, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Pub. L. 111-201 (July 21, 2010), doubled the statutory filing period for SOX retaliation complaints from 90 to 180 days. However, the amended limitations period would not revive a SOX claim on which the previous statute of limitations had run. See *Berman v. Blount Parrish & Co, Inc.*, 525 F.3d 1057 (11th Cir. 2008). Regardless, even if Dodd-Frank provided for retroactive application of the extended filing period, the procedural change would not benefit Complainant, as the statute of limitations would have run in either circumstance.

<sup>5</sup> At the hearing, Mr. Cullen testified that he received an abnormally poor performance review in December 2006. (Tr. at 47). Assuming, but not deciding, that this performance review qualifies as an additional discriminatory action that is separately actionable under SOX, the complaint that Mr. Cullen filed with OSHA on March 22, 2012 contains no such allegation, and he is now time-barred from amending it to include an additional adverse action.

<sup>6</sup> As the complaining party, it is Mr. Cullen's burden to demonstrate why equitable principles should be applied to toll the limitations period. *Wilson v. Sec'y, Dep't of Veterans Affairs*, 65 F.3d 402, 404(5th Cir. 1995). However, as a pro se complainant lacking legal expertise, this Court will analyze Mr. Cullen's complaint "with a degree of adjudicative latitude." *Hyman v. KD Resources, Inc, et al.*, ARB No. 09-076, ALJ No. 2009-SOX-020, slip. op. at 8 (ARB March 28, 2010) (citing *Ubinger v. CAE Int'l*, ARB No. 07-083, ALJ No. 2007-SOX-036, slip op. at 6 (ARB Aug. 27, 2008)).

Although not expressly alleged, Mr. Cullen does suggest that his communications with Ms. Abaun constitute notice of intent to file a whistleblower complaint with the Department of Labor. Assuming, but not deciding, that his discussions with Ms. Abaun satisfy the notification requirements under the Act,<sup>7</sup> Mr. Cullen concedes that his initial communications with her took place well before Citigroup gave notice of termination, and only concerned complaints about pension miscalculations and mismanagement of trust accounts. Additionally, as an employee cannot file a complaint in anticipation of retaliation under the employee protection provisions of the Act, Mr. Cullen's communications with Ms. Abaun prior to November 28, 2007 – the date Mr. Cullen received notice of his termination – are insufficient to constitute notice of intent to file a SOX retaliation complaint against Citigroup.

Mr. Cullen did testify that he spoke with Ms. Abaun in mid-December 2007, which, had he expressed an intent to file a retaliation complaint against Citigroup, may have fallen within the 90-day statutory filing period. (Tr. at 164). However, Mr. Cullen admits that, although he mentioned that he was no longer working at Citigroup, the purpose of this call was to complain about Citigroup's management of trust accounts, and also to discuss his on-going pension dispute with the Bank of New York. (Tr. at 164-65). According to Mr. Cullen's testimony, he told Ms. Abaun that he planned to ask the State of New York Attorney General to investigate Citigroup's mismanagement of trust accounts and fraudulent activities, not because he believed he had suffered illegal retaliatory action, but because he was more concerned with his clients' interests than his own. (Tr. at 164-66). Likewise, Mr. Cullen's additional communications with Ms. Abaun – all of which occurred after the 90-day filing period had closed – primarily focused on his pension dispute and allegations that Citigroup mismanaged trusts and engaged in fraudulent activity. (See CX2 at 7; RX5; RX11). Not until his July 29, 2009 email to Ms. Abaun does Mr. Cullen clearly allege that Citigroup fired him in retaliation for reporting wrongdoing. (RX5).

Mr. Cullen further suggests that his conversation with investigators from the Charities Bureau of the State of New York Office of the Attorney General on December 27, 2007 constituted notice to a government agency of his intent to file a retaliation claim. Even if this Court were to find that this meeting qualifies as constructive notice for purposes of filing a SOX complaint, Mr. Cullen's complaints to the investigators were likewise limited to allegations that Citigroup mismanaged trust accounts and engaged in fraudulent activity. Mr. Cullen admits that he did not complain to the investigators about any retaliatory employment action taken against him by Citigroup. (Tr. at 121).

Finally, Mr. Cullen's initial filing of three complaints in New York small claims court in 2008 for correction of his pension benefits, correction of severance benefits and resolution of a credit card dispute, which were subsequently removed, in part, to United States Federal District Court, cannot be considered as providing OSHA with constructive notice, as the filing likewise occurred after the 90-day limitations period.

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<sup>7</sup> Whistleblower complaints must be filed with the Secretary of Labor. 18 U.S.C. § 1514(b)(1)(A). The Secretary has delegated to the Assistant Secretary for OSHA responsibility for receiving and investigating complaints. 29 C.F.R. § 1980 n.1. The pertinent DOL regulations instruct that a complaint should be filed with the OSHA Area Director responsible for the area where complaint resides or where the alleged wrongful acts occurred, but may be filed with any OSHA officer or employee. 29 C.F.R. § 1980.103 (c). The EBSA is not part of OSHA. However, the filing of an otherwise timely complaint with the wrong DOL office does not necessarily render the filing invalid as OSHA regulations provide that a complaint may be filed with any official of the Department of Labor. 29 C.F.R. § 1980.103(d). However, the complaint must still allege a SOX related retaliatory action.

On the evidence before me, I find that Mr. Cullen did not complain about retaliatory action taken against him by Citigroup prior to February 27, 2008. Consequently, Mr. Cullen failed to give notice of his intent to file a retaliation complaint to a government agency within the 90-day statutory limitations period. Additionally, Mr. Cullen has not produced sufficient evidence invoking equitable principles that would justify tolling the limitations period in this case.

#### D. Conclusion

I find that the adverse personnel action alleged by Mr. Cullen – receiving notice of termination from Citigroup – occurred on November 28, 2007. The last day to file his complaint under the Act was February 26, 2008, the 90<sup>th</sup> day after he received notice of termination. Mr. Cullen did not file his formal retaliation complaint with OSHA until March 22, 2012. Since I have found no basis for tolling the limitations period, Mr. Cullen’s SOX complaint is untimely, and his complaint alleging a violation of the Sarbanes-Oxley Act’s employee protection provision must be dismissed.

#### *Order*

The complaint for whistleblower protection under the Sarbanes-Oxley Act filed by John J. Cullen with the Occupational Safety and Health Administration on March 22, 2012 is hereby DISMISSED.

SO ORDERED:

STEPHEN R. HENLEY  
Administrative Law Judge

Date Signed: September 26, 2012  
Washington, D.C.

**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 (4) copies of the petition for review with the Board, together with one (1) copy of this decision. In addition, within thirty (30) calendar days of filing the petition for review you must file with the Board: (1) an original and four (4) copies of a supporting legal brief of points and authorities, not to exceed thirty (30) double-spaced typed pages, and (2) an appendix (one (1) 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 thirty (30) calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition of to the petition for review must include: (1) an original and four (4) copies of the responding party's legal brief of points an authorities in opposition to the petition, not to exceed thirty (30) double-spaced typed pages, and (2) an appendix (one (1) copy only) consisting of relevant excerpts of the record of 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 (4) copies), not to exceed ten (10) 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).