



Issue Date: 13 March 2012

Case Number: 2012-SOX-00009

In the Matter of:

BARBARA FORDE,
Complainant,

v.

UNITED STATES POSTAL SERVICE,
Respondent.

Before: STEPHEN L. PURCELL
 Chief Administrative Law Judge

**ORDER DISMISSING CASE AS UNTIMELY AND
FOR LACK OF JURISDICTION**

This proceeding arises 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 (“Sarbanes-Oxley”), and the applicable regulations issued thereunder at 29 C.F.R. Part 1980. The Regional Administrator did not find a violation of the Act and issued findings to that effect on behalf of the Secretary of Labor on November 29, 2011. According to the Regional Administrator, Respondent is not a company within the meaning of 18 U.S.C. §1514A because it is not a publicly-traded corporation with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. §781), nor is it required to file reports under Section 15(d) of the Securities Exchange Act (15 U.S.C. §780(d)). In addition, the Regional Administrator indicated that Complainant filed her complaint more than ninety (90) days after the adverse action in this case, and consequently her complaint was untimely under 18 U.S.C. §1514A(b)(2)(D).¹

According to the Regional Administrator, Complainant was a Contract Technician Level Seven Clerk at the Brooklyn General Mail Facility for the United States Postal Service, and was not an employee covered under 18 U.S.C. §1514A. As noted in the Procedural History of the

¹ As the prior Notice of Docketing and Order to Show Cause states, this time limit has since been extended by Congress to 180 days. Section 922(b) and (c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 (July 21, 2010). Even if the amendment to the statute was applicable to the instant claim, Complainant’s complaint would still have been untimely as it was outside of the 180-day window.

Notice of Docketing and Order to Show Cause issued by the undersigned on January 20, 2012, Complainant filed a SOX complaint with the Office of the President of the United States on February 22, 2010, alleging retaliatory treatment on July 31, 2009 for disclosing “gross waste, gross mismanagement and violations of laws/rules and regulations” to management. Following receipt of the Regional Administrator’s Findings dated November 29, 2011, Complainant filed a Response and Request for Hearing on January 12, 2012, which is deemed timely for these purposes.²

On January 20, 2012, the undersigned administrative law judge issued a Notice of Docketing and Order to Show Cause as to why this case should not be dismissed for lack of jurisdiction since Respondent did not appear to be a covered corporation, and Complainant not a covered employee, under Sarbanes-Oxley. In addition, Complainant was also directed to show cause as to why the Complaint should not be dismissed because Complainant’s initial filing was untimely. No response to the Order to Show Cause was received from Complainant.

The Rules of Practice and Procedure before the Office of Administrative Law Judges state the following, in pertinent part:

If a party or an officer or agent of a party fails to comply with a subpoena or with an order, . . . the administrative law judge, for the purpose of permitting resolution of the relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may . . . [r]ule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.

29 C.F.R. § 18.6(d)(2)(v). Because Complainant failed to show cause as to why the case should not be dismissed for lack of jurisdiction and for untimeliness in the filing of the initial Complaint, this case must be **DISMISSED**.

SO ORDERED.

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STEPHEN L. PURCELL
Chief Administrative Law Judge

Washington, DC

² Complainant includes a notarized statement in her Response indicating that she was notified of a letter by certified mail on December 30, 2011, but was unable to retrieve it from the Post Office until January 4, 2012.

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).