



Issue Date: 27 February 2012

Case No.: 2012-SOX-00010

In the Matter of

LIU MENG-LIN,

Complainant,

v.

SIEMENS AG

And

SIEMENS LIMITED CHINA,

Respondents.

DECISION AND ORDER DISMISSING COMPLAINT

By Order issued February 10, 2012, the Presiding Judge ordered Complainant to show cause why his complaint should not be dismissed for his failure to file his objections to the Secretary's Findings in a timely manner.

Complainant filed a timely response on February 21, 2012.

The following facts are not in dispute:

1. On August 16, 2011, Complainant filed a timely complaint with the Secretary alleging that Respondent discriminated against him in violation of SOX.
2. On December 27, 2011, the Acting Regional Director of the Occupational Safety and Health Administration (OSHA) dismissed the complaint. In the Secretary's Findings, the parties were notified that objections to the Findings and a request for a hearing before an Administrative Law Judge (ALJ) must be filed within 30 days of receipt of the Findings with the Chief Administrative Law Judge in Washington, D. C.
3. Complainant received the Secretary's Findings in Shanghai, China at 12:24 p.m. on December 31, 2011.
4. 29 C.F.R. § 1980.106(a) specifies:

Any party who desires review, including judicial review, of the findings and preliminary order, or a respondent alleging that the complainant was frivolous or brought in bad faith who seeks an award of attorney's fees under the Act, must file any objections and/or a request for a hearing on the record within 30 days of

receipt of the findings and preliminary order pursuant to § 1980.105(a). The objections, request for a hearing, and/or request for attorney's fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal or email communication is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U. S. Department of Labor, Washington, DC 20001, and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U. S. Department of Labor.

5. Complainant did not send his objection and request for hearing by mail or facsimile communication. Rather, he sent his objection and request for hearing by "other means", i. e. by FedEx courier. Therefore, his objection and request for hearing would be filed upon receipt by the Chief Administrative Law Judge. The objection and hearing request was not received until January 31, 2012, one day after the Secretary's Findings became final.

Complainant's Argument

1. Complainant submits that Secretary's Findings were not issued in a timely fashion. The complaint was filed on August 16, 2011 and the Findings were not issued until December 27, 2011, well in excess of the 60 day requirement. See 29 C. F. R. §1978.104(b). The Presiding Judge finds that this does not somehow then excuse the Complainant from filing a timely request for hearing. The Findings clearly lay out the thirty day filing requirement in order to forestall the finality of the Secretary's Findings. Therefore, I conclude that this is not a reason to justify equitable tolling.

2. Complainant submits that a recent Administrative Review Board decision concerning extraterritorial application of the Sarbanes Oxley law somehow delayed Complainant's ability to timely request a hearing in this matter. Complainant does not submit that any issue in the case involved a late filed hearing request. Consequently, I conclude that this is not a ground for equitable tolling.

3. Complainant next argues that he had difficulty finding an attorney and had to draft his own objection to the Findings. This is not a reason to justify equitable tolling. Complainant was clearly instructed in the Findings that he had 30 days to merely request a hearing. Yet he waited until the 11th hour to send his request by FedEx courier. The fact that he was also looking for an attorney during this time did not interfere with him also requesting a hearing in a timely fashion.

4. Complainant also blames the Chinese New Year for interfering with FedEx's ability to get the request delivered in a timely fashion. The record does not back up this assertion. Rather, it shows that Complainant waited until December 29, 2011 to drop off the package to FedEx. It was shipped by air on December 30, 2011. (See Appendix 1 to Complainant's response). It was

received by the Office of Administrative Law Judges on December 31, 2011. I conclude this is not a reason to justify equitable tolling.

5. Finally, Complainant submits that although the Findings notified him of the need to request a hearing within 30 days, it did not inform him of the specifics of 29 C.F.R. §1980.106(a). Ignorance of the regulations does not justify equitable tolling nor was Complainant somehow lulled into inaction by anyone including the Respondent or the U. S. Department of Labor.

Accordingly, IT IS ORDERED that the Secretary's Findings are final and this case IS DISMISSED.

SO ORDERED.

A

DANIEL A. SARNO, JR.
District Chief Administrative Law Judge

DAS,JR./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.

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).