



**Issue Date: 24 May 2012**

Case No.: 2012-SOX-00013

In the Matter of

**CHRISTIAN NIELSEN**  
Complainant

v.

**AECOM TECHNOLOGY CORP.**  
Respondent

**ORDER GRANTING RESPONDENT'S MOTION TO DISMISS**

This matter involves a complaint under the employee protection provision of § 806 of the Sarbanes-Oxley Act of 2002 (SOX or the "Act"), 18 U.S.C. § 1514A, and its implementing regulations found at 29 C.F.R. Part 1980.<sup>1</sup> The governing procedural regulation is at 29 C.F.R. Part 18. A hearing in this matter is currently scheduled for June 13, 2012, in New York City. The Complainant and the Respondent are both represented by counsel.

**Parties' Submissions Regarding Dismissal and/or Summary Decision**

Received in my office on March 28, 2011, the Respondent submitted a Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted Under Fed. R. Civ. P. 12 (b)(6), accompanied by a Memorandum of Points and Authorities. In the Respondent's supporting memorandum, counsel asserted the Complainant's claim must be dismissed because "[t]here is no extraterritorial application of the SOX whistleblower protection provisions, and none of the circumstances surrounding Complainant's employment or termination involve the United States." Memorandum at 3.

By letter dated May 4, 2012, through counsel, the Complainant submitted a response in opposition to the Respondent's Motion.<sup>2</sup> Appended to the submission as "Exhibit A" was a copy of the Complainant's Initial Complaint to OSHA, dated December 13, 2011 (hereinafter, "Initial Complaint").

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<sup>1</sup> All citations to regulations are to this Title of the Code of Federal Regulations.

<sup>2</sup> Complainant's response is timely. By Order dated April 23, 2012, I directed by the Complainant to file his response to the Respondent's Motion by April 30, 2012. By Order dated April 27, 2012, I granted the Complainant's request for an extension of time to submit a response, to May 4, 2012.

### The Contents of the Record

I inform the parties that, in addition to the Respondent's Motion and the Complainant's response and the documents submitted with those items (Respondent's Memorandum of Points and Authorities; Complainant's Initial Complaint), the substantive record before me consists solely of the following:<sup>3</sup>

- Secretary's Findings, dated January 27, 2012 (3 pages);
- Cover Sheet, OSHA Report of Investigation, dated January 23, 2012 (1 page);<sup>4</sup>
- Complainant's counsel's request for hearing, dated February 27, 2012 (1 page);<sup>5</sup>
- Respondent's Initial Submission, dated March 23, 2012 (3 pages, plus 2-page cover letter), submitted in response to my Order dated March 9, 2012.
- Complainant's Initial Submission, dated March 26, 2012 (1 page), with appended copy of Complainant's OSHA Complaint, dated December 13, 2011 (4 pages plus 1 page fax receipt), submitted in response to my Order dated March 9, 2012.<sup>6</sup>

### The Parties' Positions

The Respondent's principal argument is that the recent Administrative Review Board (hereinafter, "Board") decision in the case of Villanueva v. Core Laboratories NV establishes that SOX § 806 lacks extraterritorial application and, thus, § 806 cannot apply in the Complainant's case. Villanueva v. Core Labs. NV, ARB No. 09-108 (ARB Dec. 22, 2011). In the Memorandum of Points and Authorities accompanying the Motion, the Respondent asserted the following facts that, in its view, mandate dismissal:

- The Complainant is not a U.S. citizen;
- Complainant worked exclusively outside of the United States for a foreign subsidiary of the Respondent;
- the decisions to hire and fire the Complainant were made outside the United States;
- the Complainant's alleged protected activity involves concerns raised about purported violations of foreign safety standards;
- Complainant's employment was terminated by the foreign subsidiary, not by the Respondent; and

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<sup>3</sup> The remainder of the record consists of the following submissions by the parties: Respondent's counsels' notice of appearance, dated March 22, 2012; filings relating to Complainant's request for extension of time to submit response to Respondent's Motion.

<sup>4</sup> Per § 1980.105(b), the only documents of which copies are transmitted to the Chief Administrative Law Judge, upon OSHA's completion of its investigation, are the original complaint and the findings and/or order. Thus, the full investigation is not of record, and is not before me.

<sup>5</sup> The record contains an original and a fax of this document. The envelope in which the original was sent to the Office of Administrative Law Judges is also in the record.

<sup>6</sup> In my Order of March 9, 2012, I directed that the Complainant append a copy of his Initial Complaint to his Initial Submission.

- No official in the United States was aware of the Complainant or his circumstances until after the Complainant's employment had been terminated.

Memorandum at 3-4. In the alternative, the Respondent also noted that summary decision, pursuant to 29 C.F.R. § 18.40(d) "also would be appropriate." Id. at 4 n.2.

In his response in opposition to the Motion, the Complainant asserted that, although he was employed overseas, the final decision concerning his employment "was made by senior AECOM executives located in the United States." He also asserted the following facts that, in his view, support his position:

- On July 7, 2011, he contacted a senior AECOM official and requested an independent investigation into his dismissal;<sup>7</sup>
- The AECOM official informed him that a second AECOM official, located in Virginia, would conduct an investigation;
- The Complainant provided "a comprehensive report detailing the events culminating in his discharge" to this second official, on July 12, 2011;
- On August 26, 2011, the second official contacted the Complainant by e-mail and informed him the investigation had concluded that no wrongdoing had occurred and the Complainant's termination from employment was justified;
- The Complainant twice requested a copy of AECOM's investigation, but was informed the results were confidential; and
- Executives of AECOM in the United States had the authority to reverse the initial termination decision but did not.

Response at 1-2. The Complainant acknowledged the Board's decision in Villanueva but asserted that "the two well reasoned dissenting opinions in Villanueva correctly decided the extra-territorial jurisdiction question and will be adopted by the Fifth Circuit reviewing the Villanueva decision."<sup>8</sup> Id. at 1.

#### Motion for Failure To State a Claim Upon Which Relief Can be Granted

Procedures for addressing SOX complaints within the Department of Labor are set forth in 29 C.F.R. Part 180. Rules of practice and procedure for proceedings by the Office of Administrative Law Judges are set forth at 29 C.F.R. Part 18A, and apply to SOX complaints. § 180.107(a). These procedures state: "The Rules of Civil Procedure for the District Courts of the United States shall be applied in any situation not provided for or controlled by these rules, or by any statute, executive order, or regulation." § 18.1(a).

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<sup>7</sup> According to the Complainant's Initial Complaint, he was informed on June 23, 2011, that his employment was to be terminated and his employment was effected on June 27, 2011. Initial Complaint at 3.

<sup>8</sup> Villanueva is currently on appeal at the U.S. Court of Appeals for the Fifth Circuit. No. 12-60122 (5th Cir., Feb. 20, 2012).

The Federal Rules of Civil Procedure (Fed. R. Civ. P.) permit a party to assert its defense to a matter in multiple ways, including by moving for dismissal based on the opponent's failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). The Departmental rules of practice do not specifically provide for this remedy. However, the Board has recognized that it is an appropriate mechanism whereby a respondent may seek dismissal. Neuer v. Bessellieu, ARB No. 07-036 (ARB Aug 31, 2009), slip op. at 4 n. 17; Powers v. PACE, ARB No. 04-111 (ARB Aug. 31, 2007), slip op. at 8-9; Villanueva v. Core Labs. NV, ARB No. 09-108 (ARB Dec. 22, 2011), slip op. at 14 n.27; but see Sylvester v. Parexel Int'l LLC, ARB No. 07-123 (ARB May 25, 2011), slip op. at 12-13 (Rule 12 motions challenging sufficiency of pleadings are "highly disfavored" by SOX regulations; such complaints require further analysis pursuant to § 18.40 or an evidentiary hearing on the merits).

In Neuer, the Board set out the standard for assessing 12(b)(6) motions. It stated: "Under Fed. R. Civ. P. 12(b)(6), all reasonable inferences are made in the non-moving party's favor. The burden is on the complainant to frame a complaint with 'enough facts to state a claim to relief that is plausible on its face.'" Neuer, slip op. at 4 (footnote omitted).

Only seven months after articulating in Sylvester that Rule 12 motions (such as motions under Rule 12(b)(6)) are disfavored in SOX cases, and instructing that dismissal motions require further analysis under the standard for summary decision (§ 18.40), the Board decided Villanueva. In that case, the Board construed the administrative law judge's action as a dismissal based on Rule 12(b)(6), and then upheld his dismissal of the complaint. Villanueva, slip op. at 14 n.27. As will be discussed in more detail below, the issue in Villanueva involved the extraterritorial reach of § 806 of SOX. Based on the Board's action, I conclude that Rule 12(b)(6) is an appropriate vehicle to address the extraterritorial nature of a complainant's complaint under SOX § 806. Consequently, I find it is not necessary to address the Respondent's alternate motion for summary decision under 29 C.F.R. § 18.40.

### Section 806 and its Requirements

The whistleblower protection provision of the Sarbanes-Oxley Act, § 806, is codified at 18 U.S.C. § 1514A. It protects employees of publicly traded companies (companies with securities registered under § 12 of the Securities Exchange Act of 1934, or those required to file reports under § 15(d) of that statute) from adverse action related to the employee's protected activity. Protected activity is defined in § 806 as providing information that the employee "reasonably believes constitutes a violation" of Title 18, Sections 1341, 1343, 1344, or 1348 of the United States Code;<sup>9</sup> any rule or regulation of the Securities and Exchange Commission; or any provision of Federal law relating to fraud against shareholders. § 806(a)(1). Section 929A of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Pub. L. No. 111-203 (2010), amended 18 U.S.C. § 1514A(a) by inserting the words "including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company" to the definition of companies covered in SOX § 806. Thus, as of the effective date of Dodd-Frank, July 21, 2010, employees of subsidiaries of publicly traded

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<sup>9</sup> These provisions relate to mail fraud, wire fraud, bank fraud, and securities fraud.

companies are covered under the whistleblower protection provisions of the Sarbanes-Oxley Act.<sup>10</sup>

A complainant in a Sarbanes-Oxley case must establish the following elements by a preponderance of evidence: he engaged in protected activity, as defined in § 806; the Respondent knew he engaged in protected activity; he suffered an adverse action related to his employment; the protected activity was a contributing factor in the adverse action. Getman v. Southwest Sec., Inc., ARB No. 04-059 (ARB July 29, 2005). In Villanueva, the case the Respondent cites as dispositive in the instant matter, the Board held that SOX § 806 is not extraterritorial in its scope; consequently, it affirmed an administrative law judge's dismissal of a Sarbanes-Oxley complaint. Villanueva, slip op. at 14.

The Board's holding in Villanueva is controlling law. Consequently, I must assess the instant matter in light of this precedent.

#### Villanueva and Its Application

Mr. Villanueva is a non-American citizen who was an employee of an indirect foreign subsidiary, in Colombia, of a publicly traded U.S. company. He made complaints involving alleged fraud under Colombian law, raising these concerns with his superiors in Colombia and copying U.S. officials. He was denied a pay raise and, ultimately, his supervisors in Colombia terminated his employment. Villanueva filed a complaint under § 806 of SOX. As the Board stated, the ALJ dismissed the complaint, finding that Villanueva "had no connection with the United States . . . was never a U.S. citizen or resident, was never assigned to work in the United States, and he was never directly employed by any other [affiliate of the U.S. company]." Villanueva, slip op. at 6; see also Villanueva v. Core Labs. NV, Case No. 2009-SOX-00006 (ALJ June 10, 2009). Additionally, the Board noted, the ALJ found that the activities about which Villanueva complained, as well as the adverse actions against him, did not have a sufficient nexus with the United States, because they all took place outside the United States and involved a relationship between a foreign employer and its foreign employee. Id.

The Board performed a textual analysis of § 806 of SOX, in light of a recently decided Supreme Court case, Morrison v. Austral. Nat'l Bank Ltd., 561 U.S. \_\_\_, 130 S.Ct. 2869, 2876-77 (2010). Villanueva, slip op. at 8-12. It concluded: "Section 806(a)(1)'s silence as to its extraterritorial application requires that we not extend it in that way. Thus we hold that Section 806(a) does not allow for its extraterritorial application." Id., slip op. at 12. The Board then applied its holding to the facts in Villanueva's case. Villanueva asserted that SOX § 806 need not be applied extraterritorially in his case because executives of the parent U.S. company directed the fraudulent conduct and also imposed adverse action against him. The Board found

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<sup>10</sup> In his response to the Motion, the Complainant asserted that "for jurisdiction purposes" his complaint is covered under SOX, because employees working for foreign subsidiaries of publicly traded companies are covered. Response at 2. Because the Complainant's protected activity (as recited in his Initial Complaint) occurred in 2011, I find that his status as an employee of a subsidiary of publicly traded company does, of itself, not negate jurisdiction under SOX § 806.

that “these arguments would not obviate applying Section 806(a)(1) extraterritorially.” Id. It noted that the alleged fraud of which Villanueva complained involved “actions affecting foreign companies doing business in a foreign country, and a failure to comply with foreign tax law.” Id., slip op. at 13. The Board also stated that the fact that Villanueva reported alleged misconduct to officials of the parent company in the United States, or that they responded to his inquiries, did not change the foreign nature of the activities about which Villanueva complained. Id. And the Board reiterated that, in his allegations of fraudulent conduct, Villanueva did not assert any fraud involving U.S. law. Id.

In a footnote, the Board stated that in assessing whether a complainant’s complaint would require extraterritorial application of § 806, among the factors to consider would be location of the protected activity; location of the job and the company employing the complainant; location of the retaliatory act; and the “nationality” of the laws allegedly violated that the complainant has been fired for reporting. Id., slip op. at 10 n.22. It noted that the ALJ determined that the “principal parts” of Villanueva’s case were extraterritorial, even though there may have also been components that were domestic. The Board emphasized that its decision was based on its conclusion that the “driving force of the case” -- the activity being reported -- was “solely extraterritorial and takes the events outside Section 806’s scope.” Id.

#### Applying Villanueva to Complainant’s Complaint

In order to determine the application of Villanueva to the Complainant’s complaint, I begin with the Complainant’s Initial Complaint. This document recounts the Complainant’s protected activity – that is, the improper conduct the Complainant reported to his management.<sup>11</sup> Notably, the record before me does not contain copies of the documents in which the Complainant made his reports to management; however, because I construe all issues in the light most favorable to the Complainant as the non-moving party, I will presume that the matters in his Initial Complaint accurately reflect what he reported. See Neuer, slip op. at 4.

The Complainant stated that he repeatedly objected to the “submission of engineering plans that had not been properly reviewed in accordance with fire safety standards and yet were falsely represented as having met fire safety legal requirements as well as AECOM’s internal safety standards.” Initial Complaint at 1-2. He recounted that he complained that one of his subordinates permitted fire safety designs to be designated as reflecting AECOM’s approval, without proper review. Id. at 2. Further, the Complainant asserted that this was a “fraudulent business practice” that had the potential of exposing the company to extreme financial risk, and thus constituted shareholder fraud. Id.

On my review of the Complainant’s Initial Complaint, I find that his allegations that a violation of fire safety requirements constitutes a “fraudulent business practice,” and thus involves exposing the Respondent company to extreme financial risk, and thus constitutes shareholder fraud, brings his complaint within the ambit of protected activity, as defined in SOX § 806. I note that the relationship between the conduct alleged in the Complainant’s initial complaint and shareholder fraud seems quite attenuated; however, in light of the requirement to

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<sup>11</sup> The Complainant’s Initial Complaint is dated December 13, 2011; the Board issued Villanueva on December 22, 2011.

draw all inferences in the Complainant's favor, and mindful that the Board has cautioned that a complainant must only "reasonably believe" that the conduct he complains about implicates one of the provisions mentioned in SOX § 806, I find that the Complainant's Initial Complaint reflects he engaged in protected activity, as defined in § 806. See Sylvester v. Parexel Int'l LLC, ARB Case No. 07-123 (ARB May 25, 2011), slip op. at 13-15.

On review of the record, I also find that the Complainant's Initial Complaint does not indicate that the "fire safety legal requirements" that he alleged were being violated were foreign safety standards, which is what the Respondent contends in the Motion. Initial Complaint at 2-3; Memorandum at 4. In his response to the Motion, the Complainant does not contravene the Respondent's assertion that his alleged protected activity involved allegations of violations of "UAE [United Arab Emirates] safety standards set by the UAE's Civil Defense Authority." See Memorandum at 4. Therefore, based on the entire record, I conclude that the Complainant's protected activity involved complaints about a violation of foreign law only.

This brings the Complainant's case squarely on point with the Board's decision in Villanueva. The Board specifically held that because the fraudulent activity being reported was solely extraterritorial the complaint is outside the scope of SOX § 806. Villanueva, slip op. at 13. Consequently, because the Complainant's protected activity in the instant matter involved an allegation of a violation of foreign law, just as did Villanueva's, dismissal of this matter under Rule 12(b)(6) on this basis is supported by the record.

Although the Board in Villanueva based its determination on the single factor of the non-domestic nature of the legal violation that the complainant alleged, it also mentioned other factors that may be relevant to determining whether a complaint does (or does not) require extraterritorial application of § 806. As noted above, the Board specifically stated (albeit in a footnote) that the location of the job and the company the complainant is fired from, the location of the retaliatory act, and the location of the protected activity are all factors to consider when making a determination on the extraterritorial nature of a complaint.<sup>12</sup> Notably, even though the Board determined that Villanueva had specifically alleged that officials of the parent company in the United States were complicit in the conduct he reported, and even though Villanueva sent a copy of his report of alleged fraud to United States officials, these facts were insufficient to negate the extraterritorial nature of Villanueva's claim.

Applying all these factors, based on the record before me, I find the following additional facts:

- The Complainant (who is not a United States citizen) was employed outside the United States;
- The Complainant was employed only by a foreign subsidiary of a United States publicly traded company;
- The Complainant's protected activity (complaints about fire safety standards) was made to officials outside the United States;

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<sup>12</sup> I note that the Board's footnote stated that the "location of the protected activity" is the "driving factor" in Villanueva, but its analysis focused on the non-domestic nature of the law the complainant contended were being violated. These are not exactly the same thing. See slip op. at 10-11.

- The Complainant’s termination from employment occurred outside the United States;
- The Complainant’s employment was terminated by officials who also were outside the United States;
- There is no evidence of record that any official in the United States was aware of the Complainant’s protected activity or his termination from employment until after the Complainant’s employment had been terminated.

In light of the Board’s decision in Villanueva that § 806 is not extraterritorial in its scope, I find that none of the facts listed above negates the extraterritorial nature of the Complainant’s complaint. Indeed, I find there is less linkage between the United States and the Complainant in the instant matter than there was in Villanueva. For example, in Villanueva, the complainant alleged that officials of the United States parent company controlled the fraudulent activity that formed the gravamen of his complaint; the complainant sent a copy of his complaint to at least one official in the United States; and the complainant alleged that an adverse action (denial of a pay raise) that occurred prior to his termination from employment was ordered by United States officials. Villanueva, slip op. at 4, 12. In the instant matter, there is no evidence of any pre-termination connection between the Complainant’s actions and United States officials of the parent company.

#### Respondent’s Post-Termination Activity

In his Response to the Respondent’s Rule 12(b)(6) Motion, the Complainant asserts that “the final decision concerning his AECOM employment was made in the United States.” Response at 1. He then recounted that he contacted officials in the United States about two weeks after his employment had been terminated and requested their assistance in investigating his dismissal, to no avail.<sup>13</sup> Response at 1-2.<sup>14</sup> I infer, from the Complainant’s recitation of these facts, that the Complainant’s position is that if the Respondent’s activities in refusing to provide him a copy of its investigation and failing to contravene his termination from employment are considered as adverse actions, then this may establish a domestic connection to his complaint, thus obviating its extraterritorial nature. However, the Complainant cites no authority, and I have found none, holding that post-termination actions constitute additional adverse actions in a Sarbanes-Oxley or other whistleblower complaint.<sup>15</sup>

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<sup>13</sup> The Complainant also stated that the officials told him they investigated his situation and concluded that no wrongdoing had occurred and his termination from employment was justified; however, the officials refused to provide him a copy of their investigation. Id.

<sup>14</sup> The Complainant also recounted these facts in his Initial Complaint. Initial Complaint at 4.

<sup>15</sup> In Pittman v. Diagnostic Prod. Corp., Case No. 2006-SOX-053 (ALJ Mar. 17, 2006), an administrative law judge dismissed a claim upon finding that “none of the post-termination actions alleged by Mr. Pittman appear to constitute adverse employment actions within the meaning of the [Sarbanes-Oxley] Act. However, the ALJ did not specify, in his dismissal order, what actions constituted the alleged adverse acts. The Board remanded the matter to the ALJ for additional fact-finding. Pittman v. Diagnostic Prod. Corp., ARB Case No. 06-079 (ARB May 30, 2008). The action eventually was dismissed based on the complainant’s desire to file in U.S. District Court. Case No. 2006-SOX -053 (ALJ Oct. 14, 2010). From the Board’s decisions, there is no indication of the Board’s position whether post-termination events can be adverse actions under SOX § 806.

Moreover, I note that, even though the Complainant mentioned the Respondent's alleged post-termination actions in his Initial Complaint, it appears that the adverse action upon which the Complainant has chosen to base this litigation is his termination from employment. In my Order of March 9, 2012, I directed the parties to file Initial Submissions and to state "the discrete acts of retaliation or discrimination performed by the Employer for which the Complainant has asserted subject matter jurisdiction under the Act." Order at ¶ B. In his Initial Submission, through counsel, Complainant stated as to this issue: "Complainant was terminated."

As discussed above, I have found that, based on the record before me, the decision to terminate the Complainant's employment was made by management officials outside the United States. Specifically, the Complainant stated in his Initial Complaint that Andrew Bannister, the Director of the Dubai office, informed him that he was to be terminated from employment. Initial Complaint at 3. The Complainant's assertions are consistent with the Respondent's assertions in the Motion that the decision to terminate the Complainant's employment was made outside the United States. Memorandum at 5. However, even if the decision to terminate the Complainant from employment had been made by United States officials, the Board's decision in Villanueva indicates this would not be a sufficient domestic nexus to rescue his complaint from dismissal, because of the extraterritorial nature of his protected activity.<sup>16</sup>

#### The Dissenting Opinions in Villanueva

Lastly, the Complainant asserts that the dissenting members of the ARB correctly decided the issue of extraterritorial application of § 806, and predicts that the Circuit Court, when it decides Villanueva, will adopt the dissenting opinions.

Because the Board's decision in Villanueva is binding upon me, I must follow its guidance. And so I decline to follow the dissenters' analysis of the text of § 806.

One of the dissenting judges in Villanueva, Judge Brown, did not limit his dissent to a different analysis of the statutory text. He also listed factual contentions that, taken in the light most favorable to the complainant, reflect that Villanueva's complaint is "domestic in nature," and thus is within the ambit of § 806. Villanueva, slip op. at 20 (Brown, J., dissenting). In Judge Brown's view, the most important factor was that the complainant alleged that retaliatory acts (denial of a pay raise and termination of employment) were made by officials of the United States parent company, located in the United States. Id. Judge Brown stated that, because the focus of congressional concern underlying § 806 was on the prohibition of retaliatory conduct by publicly traded companies and their subsidiaries, a principal issue for factual analysis is whether the alleged retaliation occurred domestically or not. Id., slip op. at 23-24. As Judge Brown stated: "The alleged retaliation at issue in the instant case thus falls within the domestic focus of concern that Congress sought to prohibit through enactment of Section 806." Id., slip op. at 25.

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<sup>16</sup> In Villanueva, the ALJ observed that, even if officials in the United States had made the decision to discharge the complainant, this would still not create a connection with the United States if the alleged protected activity and retaliation (the discharge itself) had occurred abroad. Though the Board did not fully analyze this issue, I note that the Board did not contradict the ALJ's conclusion on this point. Villanueva, slip op. at 6.

As noted above, the facts I have found indicate that the Complainant's termination from employment was carried out by officials overseas. There is no evidence of record to suggest that officials in the United States were aware of the Complainant's alleged protected activity, or that the Complainant's managers overseas consulted officials in the United States before terminating the Complainant's employment. On review, and upon consideration of Judge Brown's dissenting opinion, I find that the facts in the instant matter do not indicate a domestic link so as to bring the Complainant's complaint within the ambit of § 806. Rather, the record before me establishes there was no domestic aspect to the decision to terminate the Complainant's employment.

### Conclusion

Therefore, in light of the foregoing, I GRANT the Respondent's Motion. This matter is dismissed, based upon the Complainant's failure to state a claim upon which relief can be granted.

SO ORDERED.

**A**

Adele H. Odegard  
Administrative Law Judge

Cherry Hill, New Jersey

**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).