



Issue Date: 22 January 2015

OALJ Case No.: 2014-SOX-00004

In the Matter of:

**GAEL BARNEY,
Complainant**

v.

**TYCO INTERNATIONAL
Respondent**

**ORDER APPROVING WITHDRAWAL OF OBJECTIONS,
CANCELLING HEARING AND DISMISSING CLAIM**

This proceeding arises under 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).

On or about March 5, 2014, Complainant filed a timely complaint with the U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) alleging her employer, Tyco International (“Respondent”), retaliated against her by giving her a poor performance evaluation after she alleged Respondent violated internal ethics code policy by “hiring a manager that lied about, and did not hold, the credentials she claimed to have on her resume.” After conducting an investigation, the Secretary of Labor, acting through the Regional Administrator for the Occupational Safety and Health Administration’s Atlanta, Georgia office, issued a final determination letter on or about August 4, 2014, dismissing the complaint.¹ On

¹ A complainant alleging a violation of Section 806 must prove by a preponderance of the evidence: (1) that she engaged in protected activity or conduct; (2) that she 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). “Protected activity” must relate to one of six categories of misconduct – mail fraud; wire fraud; bank fraud, securities fraud; a violation of a Securities and Exchange Commission rule or regulation; or a violation of federal law relating to fraud against shareholders. OSHA found that Complainant’s allegations did not appear to fall into any of these fraudulent activities protected by SOX. Additionally, OSHA determined that Complainant’s performance evaluation were unrelated to her concerns

August 16, 2014, Complainant filed objections to the *Secretary's Findings*. By notice issued October 7, 2014, this matter is currently scheduled for formal hearing on March 10, 2015 in Miami, Florida. On January 13, 2015, Complainant filed a letter asking to "withdraw my request for an ALJ hearing due to time and money restrictions which would allow me to properly meet all requirements." Respondent does not oppose the motion.

The rules governing withdrawal of SOX complaints provide that "at any time before the ... findings and preliminary order become final, a party may withdraw its objections to the ... findings and/or preliminary order by filing a written withdrawal with the administrative law judge,"² who shall then determine whether to affirm any portion of the findings or preliminary order or approve the withdrawal.

No final decision has been issued in this matter. As such, and upon review of the entire record and for good cause shown, said request to withdraw is hereby GRANTED. Accordingly,

Order

IT IS HEREBY ORDERED that the hearing in the instant case scheduled for March 10, 2015 in Miami, Florida be, and is hereby, CANCELLED.

Consistent with the regulations, the Secretary's findings are affirmed in their entirety and the above captioned matter is hereby DISMISSED with prejudice without costs awarded to either party.

SO ORDERED:

STEPHEN R. HENLEY
Administrative Law Judge

regarding the manager's credentials. Additionally, OSHA noted that the Florida Department of Business Professional Regulation (FDBPR), acting upon an anonymous complaint, investigated the manager's educational background and certification requirements and concluded that she was in compliance with Florida statutes.

² 29 C.F.R. § 1980.111(c).