



**Issue Date: 14 May 2015**

Case No.: 2014-SOX-00012

*In the Matter of:*

**IVAN J. GRIMM,**  
*Complainant,*

v.

**BEST BUY,**  
*Respondent.*

**ORDER OF DISMISSAL**

On May 12, 2015, I received a received a letter dated May 7, 2015, from Complainant with the following subject line: "Notification of Intent to File Complaint in U.S. District Court" (the "Notification"). Despite my previous order that Complainant comply with 29 C.F.R. §18.3(b) by including a certificate of service with his filings and my statement that "merely putting 'cc Morgan Lewis' at the end of his submissions is insufficient to establish that he properly served them on Respondent," *see* April 8, 2015 Order at 1-2, and May 4, 2015 Order at 1, this filing was not accompanied by a certificate of service. Accordingly, I cannot be sure that Respondent has received this filing. Counsel for Respondent is thus again asked to submit by fax confirmation that she has received this filing.

The Notification states that Complainant intends to file a complaint in this matter in U.S. District Court. Complainant also requests that I "immediately stop work on this case."

This matter arises under the employee protection provisions of the Sarbanes-Oxley Act of 2002 (the "Act"), 18 U.S.C. § 1514A. The statute provides:

A person who alleges discharge or other discrimination in violation of subsection (a) may seek relief under subsection (c), by –

(A) filing a complaint with the Secretary of Labor; or

(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate

district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

18 U.S.C. §1514A(b)(1). The corresponding regulation is found at 29 C.F.R. § 1980.114. The regulation requires that “[w]ithin seven days after filing a complaint in federal court, a complainant must file with ... the ALJ ... a copy of the file stamped complaint” and the complainant must also serve a copy of the complaint on certain other officials. 29 C.F.R. § 1980.114(c).

Complainant filed his Complaint with OSHA on June 6, 2013. No decision has been issued within 180 days of the filing of the complaint, and the delay was not caused by bad faith of the Complainant. Accordingly, Complainant has a right to file a complaint in federal district court. 18 U.S.C. § 1514A(b)(1); 29 C.F.R. § 1980.114(a). If the Complainant commences an action in federal district court, the Secretary of Labor will no longer have jurisdiction over this matter. *See Stone v. Duke Energy Corp.*, 432 F.3d 320 (4th Cir. 2005) (case below 2003-SOX-12).

To date, I have not received notice that Complainant has filed an action in federal district court. Some administrative law judges have required that a complainant submit a copy of the complaint filed with the appropriate U.S. District Court before dismissing the action; others have not. *Compare, e.g., Evans v. Liberty Medical Supply, Inc.*, 2007-SOX-22 (ALJ July 2, 2007) with *Miley v. Emerachem, LLC*, 2007-SOX-31 (ALJ June 15, 2007). Others have simply closed the file subject to reopening. *See, e.g., Roberts v. Weatherford Int’l, Ltd.*, 2008-SOX-69 (ALJ Sept. 25, 2008). Based on Complainant’s representations that he intends to file an action in federal district court, this case is being dismissed. In the event that the Complainant fails to file an action in federal district court, any party may move to set aside this Order of Dismissal and reopen these proceedings.

### **ORDER**

IT IS HEREBY ORDERED that the complaint filed by Complainant Ivan J. Grimm under the Sarbanes-Oxley Act is DISMISSED WITHOUT PREJUDICE to its reinstatement if Complainant does not file an action in federal district court.

**SO ORDERED.**

**PAUL R. ALMANZA**  
Administrative Law Judge

Washington, D.C.