



**Issue Date: 03 September 2014**

**Case Number: 2014-SOX-00038**

*In the Matter of:*

**Mohamad Mitwally**  
Complainant,

v.

**Odessa Regional Medical Center**  
Respondent.

**ORDER GRANTING MOTION TO WITHDRAW  
AND DISMISSING COMPLAINT**

The proceeding arises from a claim under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002 (“the Act”), Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. §1514A. (“SOX”).

On January 24, 2014, Mohamad Mitwally (“Complainant”) filed a complaint with the Secretary of Labor alleging that Odessa Regional Medical Center (“Respondent”) constructively discharged him in violation of SOX. The Occupational Safety and Health Administration (“OSHA”) investigated the matter and issued its findings on May 22, 2014. It found that Respondent was not a covered entity within the meaning of 18 U.S.C. §1514A in that Respondent neither had a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. §781) nor was it required to file reports under Section 15(d) of the that Act. Inasmuch as Respondent was not a “covered” employer, OSHA also concluded that Complainant was not covered under SOX. OSHA further concluded that Complainant was also not an employee under SOX because the terms of his employment were “via business agreement.”

On June 30, 2014, Complainant filed Objections and a Request for Hearing with the U.S. Department of Labor, Office of Administrative Law Judges (“Office”). In his Objections and Request for Hearing, Complainant appeared to allege jurisdiction under SOX over both Respondent and himself and asserted that Respondent effected his “constructive discharge” because he complained that it had “failed to provide the ‘most rudimentary legal or regulatory compliance’ for a healthcare facility.” According to Complainant, he was forced to resign as a result of Respondent’s lack of compliance and its failure to come into compliance in response to his complaints.

On July 9, 2014, I issued a Notice of Docketing and Order to Show Cause directing the parties to explain why this case should not be dismissed inasmuch as it appeared that neither Respondent nor Complainant were “covered entities” under SOX and subject to its whistleblower provisions.

On July 30, 2014, counsel for the parties filed a Joint Motion for Extension of Time. The parties stated that the “extension is due to the time and effort involved in obtaining documentation necessary to determine whether Respondent is required to file reports under section 15(d) of the Securities Exchange Act of 1934.” The motion was granted on August 1, 2014.

On August 13, 2014, Respondent filed its Response to Order to Show and a Motion for Summary Decision. On August 27, 2014, Complainant filed a Notice of Voluntary Dismissal with Prejudice stating he “desires to, and does hereby, voluntarily dismiss, with prejudice, all claims asserted in the above-captioned case against Respondent.”

The regulations implementing the Sarbanes-Oxley Act, provide:

At any time before the [Secretary’s] findings or order becomes final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge... . The judge...will determine whether to approve the withdrawal... .

29 C.F.R. 1980.111(c). The Secretary’s findings are not final and Complainant has filed an unopposed written request to withdraw the pending SOX claim with prejudice.

Accordingly, Complainant’s Motion is **GRANTED** and this case is **DISMISSED WITH PREJUDICE**.

**SO ORDERED.**

**STEPHEN L. PURCELL**  
Chief Administrative Law Judge

**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).