



Issue Date: 30 November 2015

Case No.: **2014-SOX-00033**

In the Matter of:
WILLIAM ROSENFELD,
Complainant,

v.

COX ENTERPRISES, INC.,
and
THE ATLANTA JOURNAL-CONSTITUTION,
and

AETNA INSURANCE COMPANY,
Respondents.

**DECISION AND ORDER GRANTING RESPONDENTS'
MOTIONS FOR SUMMARY DECISION AND DISMISSING CLAIM**

This matter arises under the employee protection provision of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, (Public Law 107-204), 18 U.S.C. § 1514A (“Act” or “SOX”) as implemented by 29 C.F.R. Part 1980 and under the Consumer Financial Protection Act of 2010, Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. § 5567 (“CFPA”). The SOX provisions, in part, prohibit an employer with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 and companies required to file reports under Section 15(d) of the Securities Exchange Act of 1934 from discharging, or otherwise discriminating against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee provided to the employer or Federal Government information relating to alleged violations of 18 U.S.C. §§ 1341 (mail fraud and swindle), 1343 (fraud by wire, radio, or television), 1344 (bank fraud), 1348 (security fraud), any rule or regulation of the Securities and Exchange Commission (“SEC”), or any provision of federal law relating to fraud against shareholders.¹ No hearing has been set in the matter as there are threshold questions relating to the claim and timeliness. For the reasons set forth below, Cox Enterprises, Inc. and the Atlanta Journal-Constitution’s (collectively as “Respondent Cox”), and Aetna Insurance Company’s (“Respondent AIC”) motions are hereby granted.

¹ 18 U.S.C. §1514A(a).

PROCEDURAL HISTORY

On March 14, 2014, Complainant William Rosenfeld (“Complainant”) filed a complaint (“the Complaint”) with the Department of Labor, Occupational Safety and Health Administration (OSHA), alleging that Cox Enterprises, Inc. violated SOX and the CFPA when it coerced him in 1997 into signing an “Agreement and General Release” (“Settlement Agreement”) in retaliation for his complaints about a manager, who he asserted was involved in fraudulent activity, to management personnel at the Atlanta Journal-Constitution. Further, the Complaint alleged that the Settlement Agreement he was compelled to sign hindered him from reporting further fraudulent activity occurring in 1997 and forced him onto permanent disability leave. The Complaint also alleges that because he reported to Respondent AIC in 2010 that management at Cox had fraudulently placed him on disability leave, that Cox and AIC therefore colluded to deny an increase in Complainant’s disability earnings in 2012 as further retaliation.²

On March 21, 2014, OSHA advised Complainant that its initial investigation indicated that neither Cox Enterprises, Inc. nor the Atlanta Journal-Constitution are publicly-traded companies covered by SOX and the CFPA, and that his complaint was untimely. OSHA communicated these findings to Complainant in writing on May 21, 2014, and Complainant was given 30 days to object. By letter dated June 16, 2014, Complainant objected to OSHA’s findings and requested a hearing before the Office of Administrative Law Judges.

The case was assigned to me and a conference call was held on July 30, 2014, to set deadlines and discovery parameters. Additionally, Respondents were given until November 24, 2014 to file dispositive motions, and Complainant was given until December 22, 2014 to respond. On August 20, 2014, Respondent AIC filed an initial motion to dismiss, which was amended on August 22, 2014 (“Respondent AIC MTD”). On August 25, 2014, Respondent Cox also filed a motion to dismiss (“Respondent Cox MTD”). On September 16, 2014, Complainant filed a response to Respondents’ motions to dismiss (“Complainant Initial Response”). Complainant has additionally filed unlabeled correspondence with the undersigned and opposing counsel on October 14, 2014, January 30, 2015, May 14, 2015, and May 26, 2015 (“Complainant Subsequent Response”). The contentions contained in Complainant Initial Response in addition to those in Complainant Subsequent Response (collectively as “Complainant Objections”) will be addressed below.

SUMMARY OF PERTINENT FACTS

Complainant states that he reported alleged fraudulent accounting by his manager to Respondent Cox in 1997. (*See generally* Complainant Objections; Respondent AIC MTD at 6; Memorandum). Thereafter, Complainant’s employment with Respondent Atlanta Journal-

² Complainant’s initial communication and “filing” of the Complaint was pursuant to an on-line OSHA Complaint website. No printed copy of the Complaint has been included with the appeal file. However, a March 21, 2014, memorandum from Kathy Steward, Regional Whistleblower Investigator (“Memorandum”), memorializes the contents of the Complaint as well as a contemporaneous telephone conversation between the Investigator and Complainant. As the contents of the Memorandum substantially correlate to the Complainant’s later filings before the undersigned, I find that the Memorandum is a sufficient reflection of the Complaint to ascertain the substance of his allegations.

Constitution ended in 1997. (Respondent Cox MTD, Attachment A; Memorandum).³ As part of his separation from employment, Complainant signed the Settlement Agreement with Respondent Cox on September 15, 1997. (*Id.*)⁴ The Settlement Agreement which underlies this dispute provides, in pertinent part:

This Agreement and General Release (the “Agreement”) is made this 15th day of September, 1997 by and between Cox Enterprises, Inc. d/b/a The Atlanta Journal and The Atlanta Constitution (the “Company”), and William B. Rosenfeld (the “Employee”).

WHEREAS, the Employee was employed by the Company from on or about March 28, 1994, through February 21, 1997; and

WHEREAS, the Employee is no longer employed by the Company; and

WHEREAS, the Employee and the Company desire to settle and all disputes between them and any and all claims which could be brought by Employee against the Company;

NOW, THEREFORE, in consideration of mutual promises, the agreements and covenants contained herein, the parties hereto agree as follows;

1. This agreement shall not in any way be construed as an admission by the Company of any illegal act whatsoever against the Employee or any other person, and the Company specifically disclaims and denies any liability to or discrimination against the Employee or any other person on the part of itself, its employees, or its agents.
2. The Employee represents and agrees that he will not be reemployed by the Company and that he will not apply for or otherwise seek employment with the Company, its parent, affiliates or subsidiaries at any time without the prior written consent of the Company.
3. The Company agrees that in consideration of the Employee releasing all claims he brought, could have brought, or could bring as outlined in this Agreement, it shall do the following:

³ The Complaint indicates that Complainant’s separation from employment occurred in 1977, but this appears to be a typographical error as the “General Agreement and Release” included in the record is dated September 15, 1997.

⁴ It is noted that the circumstances under which the Settlement Agreement was signed are in dispute. Complainant alleges at various times that: (1) some of the signatures on the document were forged; (2) he was compelled against his will to sign the document in retaliation for his whistleblowing in 1997; and (3) he was misled about the terms of the agreement and its impact on his continuing ability to work. (*See generally* Complainant Objections). However, other than making these general statements, no specificity or supporting evidence has been provided by the Complainant. Respondent Cox states only that the Complainant “had left his job... earlier that year.” (Respondent Cox MTD at 5).

a. Company agrees to pay the Employee a lump sum in the gross amount of Forty Thousand Dollars and 00/100 Dollars (\$40,000.00), minus applicable deductions for social security, federal, state and local taxes;

b. The Company agrees that pursuant to Company policy, it shall provide a neutral reference regarding the Employee's employment with the Company in response to all job reference inquiries from third parties. The neutral reference shall include statements regarding only the Employee's dates of employment, the position held, and ending salary. All Company personnel responsible for providing job references shall be informed of the Company's neutral reference requirement and the penalties for violating this requirement; and

c. The Company agrees that it shall not oppose the Employee's application for Long Term Disability Benefits.

...

6. The Employee represents that he has not filed any claims, complaints or charges against the Company, its parents, affiliates or subsidiaries with any federal, state or local Court or agency that concern or related to his employment with Company or separation thereof, and the Employee agrees that he shall not file any such, claim, charge or complaint against the Company, its parent, affiliates or subsidiaries with any federal, state or local Court or agency based on events occurring prior to the execution of this Agreement and that if any such agency or Court assumes jurisdiction of any complaint or charge against the Company, its parent, affiliates or subsidiaries on behalf of the Employee, he will request such agency or Court to withdraw from the matter.

...

8. As a material inducement to the Company to enter into this Agreement, Employee hereby irrevocably and unconditionally releases, acquits, and forever discharges the Company and each of the Company's owners stockholders, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, divisions, subsidiaries, affiliates, parent and all persons acting by, through, under or in concert with them, from any and all charges, complaints, claims, liabilities, obligations, promises, damages, causes of action, rights, demands, costs, lawsuits, debts and expenses, including but not limited to attorney fees and costs actually incurred of any nature whatsoever, known or unknown, which Employee now has, or claims to have, or which Employee at any time heretofore had or claimed to have. Employee further agrees to waive irrevocably any right to recover under any claim that may be filed by the Equal Employment Opportunity Commission or any state or local fair employment practices agency with respect to his employment with the Company.

9. The Employee understands that he is forever releasing and forgiving all claims or causes of action which he brought, or could have brought in any litigation, whether under federal, state or local law, arising out of or relating to Employee's employment with the Company or separation thereof, including, but by no means limited to, claims for unlawful discharge, retaliation, intentional infliction of emotional distress, mental anguish, benefits, wages, commissions, claims of future employment, claims of discrimination based on disability, as prohibited by the Americans With Disabilities Act, as amended, or claims of any type of employment discrimination.

...

11. The Employee represents and acknowledges that in executing this Agreement, Employee does not rely and has not relied on any representation or statement made by any agent, representative, or attorney of the Company with regard to the subject matter, basis or effect of this Agreement.

(*Id.*).

Respondent AIC is the claims administrator for Complainant's long-term disability plan, and party to the Administrative Services Agreement with Respondent Cox. (Respondent AIC MTD at 1). In 2010, Complainant reported to AIC that management at Cox had fraudulently placed Complainant on disability leave because of his reports of fraudulent activity in 1997. (*See generally* Complainant Objections; Memorandum). Additionally in 2010, Complainant attempted to get an increase in his disability payment from Respondent AIC, as his original disability payment did not include cost of living increases. (*Id.*; Respondent AIC MTD at 9; Memorandum). Approximately two years after Complainant requested an increase in his disability payment, Complainant's request for increase was denied. Complainant appealed the decision, but the denial was upheld. (*Id.*).

SUMMARY DECISION STANDARD

In cases before this tribunal, the standard for summary decision is analogous to that developed under Rule 56 of the Federal Rules of Civil Procedure.⁵ An Administrative Law Judge may enter summary decision for either party if the pleadings, affidavits, material obtained by discovery, or other materials show that there is no genuine issue as to any material fact and that the party is therefore entitled to summary decision as a matter of law.⁶ "A genuine issue of material fact is one, the resolution of which could establish an element of a claim or defense, and, therefore, affect the outcome of the litigation."⁷ The primary purpose of summary decision is to isolate and promptly dispose of unsupported claims or defenses.⁸

⁵ *Frederickson v. The Home Depot U.S.A., Inc.*, ARB No. 07-100, slip op. at 5 (ARB May 27, 2010).

⁶ 29 C.F.R. § 18.40(d); *Mara v. Sempra Energy Trading, LLC*, ARB No. 10-051, ALJ No. 2009-SOX-18, slip op. at 5 (ARB June 28, 2011).

⁷ *Frederickson*, ARB No. 07-100, at 5-6 (citing *Celotex Corp v. Catrett*, 477 U.S. 317, 323-24 (1986)).

⁸ *Celotex*, 477 U.S. at 323-24.

If the party moving for summary decision demonstrates an absence of evidence supporting the non-moving party's position, the burden shifts to the non-moving party to prove the existence of a genuine issue of material fact that might affect the outcome of the case and that is supported by sufficient evidence.⁹ The non-moving party may not rest upon the mere allegations of his or her pleadings, but must instead set forth "specific facts" showing that there is a genuine issue of fact for hearing.¹⁰ Where the non-moving party "fails to make a showing sufficient to establish the existence of an element essential to his case, and on which he will bear the burden of proof at trial," there is no genuine issue of material fact, and the moving party is entitled to summary decision.¹¹ In assessing a motion for summary decision, the Administrative Law Judge must consider the record in the light most favorable to the non-moving party and draw all inferences in favor of the non-moving party.¹²

APPLICABLE LAW

Section 806 provides whistleblower protection for employees of publicly traded companies so that "[n]o company with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 . . . may discharge . . . or in any other manner discriminate against an employee . . . because of any lawful act done by the employee to provide information . . . which the employee reasonably believes constitutes a violation of . . . any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders."¹³ An "employee" is an individual presently or formerly working for a company . . . an individual applying to work for a company . . . or an individual whose employment could be affected by a company or company representative."¹⁴

Section 806 complaints are governed by the procedures and burdens of proof under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21).¹⁵ To prevail under AIR 21, an employee must prove by a preponderance of the evidence that: (1) he engaged in a protected activity as statutorily defined; (2) he suffered an unfavorable personnel action; (3) the employer knew that the employee engaged in protected activity; and (4) the protected activity was a contributing factor in the adverse personnel action.¹⁶ If the employee meets his burden of proof, the employer may avoid liability only by demonstrating by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the protected behavior.¹⁷

⁹ *Miller v. Glenn Miller Prods.*, 454 F.3d 975, 987 (9th Cir. 2006).

¹⁰ 29 C.F.R. § 18.40(c); *Mara*, ARB No. 10-051, at 5; *Frederickson*, ARB No. 07-100, at 6.

¹¹ *Celotex*, 477 U.S. at 322-23.

¹² *Mara*, ARB No. 10-051, at 5; *Frederickson*, ARB No. 07-100, at 6.

¹³ 18 U.S.C. §1514A(a).

¹⁴ 29 C.F.R. §1980.101.

¹⁵ 49 U.S.C.A. § 42121 (West Supp. 2010); see 18 U.S.C.A. § 1514A(b)(2)(C).

¹⁶ See 18 U.S.C.A. § 1514A(b)(2). See also, *Feldman v. Law Enforcement Associates Corp.*, No 12-1849, 2014 WL 1876546 (4th Cir. May 12, 2014).

¹⁷ *Getman v. Southwest Sec., Inc.*, ARB No. 04-059, slip op. at 8; (ARB July 29, 2005); cf. 29 C.F.R. § 1980.104(c); see 49 U.S.C.A. § 42121 (a)-(b)(2)(B)(iv); see also, *Feldman*, *supra*, n. 9.

An action brought under SOX “shall be commenced not later than 180 days after the date on which the violation occurs, or after the date on which the [complainant] became aware of the violation.”¹⁸ Similarly, under the CFPA, an employee who believes he has been discharged in violation of the Act “may, not later than 180 days after the date on which such alleged violation occurs, file . . . a complaint with the Secretary of Labor.”¹⁹ The statute of limitations in a whistleblower case begins to run from the date an employee receives “final, definitive, and unequivocal notice” of an adverse employment decision such as termination.²⁰ “Final” and “definitive” notice has been interpreted to mean communication that leaves no further chance for action, discussion, or change.²¹ “Unequivocal” notice refers to communication that is not ambiguous or misleading.²² The date an employer communicates to the employee its intent to implement an adverse employment decision marks the occurrence of an adverse action.²³ In determining when the statute of limitations begins to run, an employee is assumed to have a “reasonably prudent regard for his rights.”²⁴ A failure to file a complaint within the 180-day limitation period bars adjudication of the complaint.²⁵

A court may hold that time limitation provisions in like statutes are not jurisdictional, in the sense that a failure to file a complaint within the prescribed period is an absolute bar to the administrative action, but rather analogous to statutes of limitation and thus may be tolled by equitable consideration.²⁶ Restrictions on equitable tolling must be scrupulously observed; the tolling exception is not an open invitation to the court to disregard limitation periods simply because they bar what may be an otherwise meritorious cause.²⁷ “Tolling might be appropriate (1) where a respondent actively misled the complainant respecting the cause of action; (2) where the complainant has in some extraordinary way been prevented from asserting his rights; or (3) where a complainant has raised the precise statutory claim in issue but has mistakenly done so in the wrong forum.”²⁸

¹⁸ 18 U.S.C. § 1514A(b)(2)(D).

¹⁹ 12 U.S.C. § 5567(c)(1)(A).

²⁰ *Jenkins v. United States Envtl. Prot. Agency*, ARB No. 98-146, ALJ No. 88-SWD-2, slip op. at 14 (ARB Feb. 28, 2003).

²¹ *Id.*

²² *Larry v. The Detroit Edison Co.*, No. 86-ERA-49, slip op. at 2 (Sec’y July 18, 1990).

²³ *Halpern v. XL Capital, Ltd.*, ARB No. 04-120, ALJ No. 2004-SOX-00054, slip op. at 3 (ARB Aug. 31, 2005); *Overall v. Tennessee Valley Auth.*, ARB Nos. 98-111 and 98-128, ALJ No. 97-ERA-00053, slip op. at 35-36 (ARB Apr. 30, 2001).

²⁴ *Id.*

²⁵ *Piles, et al. v. Lee Hecht Harrison, LLC*, Case Nos.: 2005-SOX-00055, 2005-SOX-00056, slip op. at 15 (ALJ Nov. 8, 2005); *accord, Halpern v. XL Capital, Ltd.*, ARB No. 04-120, ALJ No. 2004-SOX-54 (ARB Aug. 31, 2005).

²⁶ *Donovan v. Hakner, Foreman & Harness, Inc.*, 736 F.2d 1421 (10th Cir. 1984); *School District of Allentown v. Marshall*, 657 F.2d 16 (3rd Cir. 1981); *Coke v. General Adjustment Bureau, Inc.*, 654 F.2d 584 (5th Cir. 1981).

²⁷ *Rose v. Dole*, 945 F.2d 1331, 1336 (6th Cir. 1991).

²⁸ *Johnson*, slip op. at 7-8; *Allentown*, 657 F.2d at 19-20; *see also Prybys v. Seminole Tribe of Florida*, Case No. 1995-CAA-15 (ARB Nov. 27, 1996); *see also Halpern v. XL Capital, Ltd.*, Case No. 2004-SOX-54 (ARB Aug. 31, 2005).

DISCUSSION

A. The Parties' Arguments

Respondent Cox moves to dismiss all claims, or alternatively for summary decision pursuant to 29 C.F.R. § 18.40(d). (Respondent Cox MTD). In support of its position, Cox maintains that: (1) Complainant's claims are time barred by the limitations provisions of SOX and the CFPA pursuant to 18 U.S.C. § 1514A(b)(2)(D) and 12 U.S.C. § 5567(c)(1)(A); (2) it is not an appropriate party pursuant to Section 806 of SOX or Section 1057 of the CFPA; and (3) there is no coverage for Complainant's claim under either Act as both SOX and the CFPA were enacted well after the alleged protected activity, and neither statute has retroactive effect. (*Id.* at 2).

Respondent AIC moves to dismiss Complainant's claims on the basis of its assertions that the undersigned lacks subject matter jurisdiction over the claims asserted against AIC and that the Complaint fails to state a claim upon which relief can be granted against AIC. (Respondent AIC MTD at 1-3). In support of its position, AIC avers: (1) Complainant does not allege to have been an employee of AIC; (2) Complainant does not allege a protected activity regarding a violation of law by AIC that is covered by SOX; (3) Complainant does not allege that AIC terminated him from his employment with Cox; (4) Complainant does not allege that AIC was a party to the separation agreement between the Complainant and Cox; and (4) the adverse action Complainant alleges occurred beyond the limitations periods provided by the relevant statutes. (*Id.* at 2-3).

Complainant, who is proceeding *pro se*, appears to assert numerous arguments regarding the Respondents' actions and identities in Complainant's Objections.²⁹ Initially, Complainant contends that he was previously prejudiced by the handling of an ERISA appeal in 2012 by Respondents, providing:

I did not turn to the Department of Labor to seek justice on what transpired in 1997, although it provides background and establishes motive for the most recent retaliation. The reason I sought intervention from the Department of Labor was the two year ERISA Appeals Process, which caused me to go broke and put a lien on my house, the subsequent refusal to answer my questions after my appeal was denied concerning which terms of the Cox Long Term Disability policy for the entire group applies to me versus the amended terms in the agreement, so I could know in writing which terms Aetna is abiding by to administer benefits so I can work, and finally the letter you sent less than 180 days prior to my seeking intervention from the Department of Labor that reinforced the terms of the agreement, which was secured fraudulently and the terms that are clearly against public policy.

(Complainant Subsequent Response of October 14, 2014).

²⁹ “[While] a *pro se* complainant may be held to a lesser standard than legal counsel with regard to matters of procedure, the burden of proving the [necessary] elements...is no less.” *Flener v. H.K. Cupp, Inc.*, 90-STA-42 (Sec’y Oct. 10, 1991).

Further, Complainant asserts that he “blew the whistle a second time at the instructions of [Respondent AIC’s] employees, which is never mentioned [sic,] but that is what this case is about it. (*Id.*). He avers that his house has “gone into foreclosure and is scheduled to be sold on June 12, 2015, as a direct result of Blowing the Whistle a second time, which sent the retaliation in motion again.” (Complainant Subsequent Response of May 14, 2015).

With regard to objections, Complainant generally objects “to all motions by [Respondents] Cox and [AIC] to dismiss this case. I also object to any further stalls that can cause further hardship or cause me to lose my house”. (*Id.*).³⁰ Specifically, Complainant objects to Respondent Cox’s position that it is a privately-held corporation as he maintains that Respondent AIC, a publicly-held corporation, is inappropriately acting at the direction of Respondent Cox in retaliation for his whistleblowing activities. (Complainant Initial Response). Complainant additionally states that while Respondent AIC was not his employer, it:

...does not have the right to assist or cooperate with a client that directs them to engage in retaliatory acts against a disabled employee of a privately held corporation, whose monthly paycheck that are administering via a Long Term Disability policy that was gained by fraudulent means as a vehicle of retaliation. [Respondent AIC] employees uncovered those benefits were secured by my managers, who engaged in insurance fraud and used [Respondent AIC] to carry out illegal retaliation in support of [Respondent Cox] Management’s act of forcing me to resign my position for failing to “overcome” the requirement I overcome my disability before I would be permitted to go to work.

(*Id.*).

Complainant further asserts that, while SOX prohibits adverse employment actions against “an employee” as a result of a protected activity, this does not require that the “employee” work for the public company, but that they are merely an “employee” of some other entity. (*Id.*). Additionally, Complainant argues that Respondent AIC has violated public policy, corporate ethics and its own code of conduct, as it was aware that the application for benefits under which he is receiving long-term disability payments was obtained by Respondent Cox under a falsified application, with a “forged” signature. (*Id.*). Complainant asserts that Respondent AIC holds documentary evidence and “undermines the decision made by [Respondent AIC] employees who discovered and confirmed fraud and sent me to blow the whistle on [Respondent Cox] for the second time...” (*Id.*). Finally, Complainant advances the premise that he only conditionally accepted long-term disability benefits on a purported verbal agreement with Respondent Cox that he would be allowed to work without Respondent AIC offsetting his long-term disability benefits. (*Id.*). He avers that the purported verbal agreement was not included in his long-term disability policy with Respondent AIC or the Settlement Agreement with Respondent Cox in retaliation for his whistleblowing activities. (*Id.*).

³⁰ Complainant is presumably referring to his belief that Respondent Cox “continually enforces the terms of the agreement after every new attack but get agencies to focus on my credibility and the date the agreement was entered into to bring up the statute of limitations, while taking focus away from the recent illegal activity and retaliation, leaving me with no rights to defend myself, report or seek relief from current or future retaliation.” (Complainant Initial Response).

B. Analysis

I. *Timeliness*

Complainant alleges that the most recent violation occurred at least two years ago when Respondents Cox and AIC purportedly colluded to deny his request for a cost of living adjustment for his long-term disability benefits. Complainant alleges that his request was denied in retaliation for Complainant's reporting to AIC in 2010 that management at Cox had fraudulently placed him on disability leave.

The 180-day statute of limitations for the Complainant's claim began to run on the date that the Complainant was provided with final, definitive, and unequivocal notice of the denial of his cost of living increase request from AIC. While there is no evidence of record to show the precise date when Complainant received the affirmance of the denial, Complainant does not dispute that he was informed of the affirmance more than 180 days prior to his filing of the Complaint. In fact, Complainant alleged that his increase request was denied approximately two years after he reported to AIC that management at Cox had fraudulently placed him on disability leave in 2010. Given that, I find that the Claimant's increase was denied and affirmed in approximately 2012. Additionally, given that the denial was upheld on appeal, I find it provided notice that was neither ambiguous nor misleading. Additionally, I find that the affirmance of the denial left no further chance for action, discussion, or change.

Given the SOX and CFPA statute of limitations, Complainant had no more than 180 days to file a complaint regarding either his termination with Cox or the denial of his cost of living increase request by AIC. Nonetheless, Complainant waited approximately 16 years after his termination with Cox and *at least* two years after the affirmance of his denial of his cost of living increase request by AIC to file a complaint. There is no evidence in the record to dispute the fact that more than 180 days had passed before Complainant filed the Complaint under Section 806. Thus, even when viewing the matter in a light most favorable to the Complainant by assuming that the violation occurred only two years ago when the denial of his cost of living increase request was affirmed, as opposed to 16 years ago when Complainant signed the Settlement Agreement, his claim is untimely, as I find that well over 180 days passed before he filed the Complaint on March 14, 2014.

II. *Equitable Tolling*

Although Complainant has not raised any equitable tolling arguments, I will address the issue nonetheless. Even if Complainant had raised an argument for equitable tolling, it would not apply to this matter as the factors required for equitable tolling are not met. No evidence was presented to show that Respondents actively misled Complainant, that Complainant was prevented from asserting his rights in some extraordinary way, or that Complainant raised the claim in the wrong forum.³¹

³¹ *Johnson*, slip op. at 8.

CONCLUSION

I find that there are no genuine issues of material fact relative to Complainant's filing of his claim, that it is time-barred under 18 U.S.C. § 1514A(b)(2)(D), and that Respondents are entitled to judgment as a matter of law.

ORDER

IT IS HEREBY ORDERED that the Summary Decision Motions filed by Cox Enterprises, Inc., the Atlanta Journal-Constitution, and Aetna Insurance Company are **GRANTED**, and the Complainant's claim against Respondents is **DISMISSED**.

Peter B. Silvain, Jr.
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within 14 business days of the date of issuance of the Administrative Law Judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington D.C. 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step-by-step user guide and FAQs can be found at <http://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; 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(a). Your Petition should identify the legal conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

When 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, D.C. 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. *See* 29 C.F.R. § 1980.110(a).

If filing paper copies, you must file an original and four copies of the Petition with the Board, together with one copy of this Decision. In addition, within 30 calendar days of filing the Petition you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed 30 double-spaced typed pages, and you may file 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. If you e-File your Petition and opening brief, only one copy need be uploaded.

Any response in opposition to a Petition 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 must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the Petition, not to exceed 30 double-spaced typed pages, and may include 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. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a Petition, 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 you e-File your reply brief, only one copy need be uploaded.

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. § 1980.110(b). Even if a Petition is timely filed, the Administrative Law Judge's Decision becomes the final order of the Secretary of Labor unless the Board issues an order within 30 days of the date the Petition is filed notifying the Parties that it has accepted the case for review. *See* 29 C.F.R. § 1980.110(b).