



**Issue Date: 02 July 2015**

Case No. 2015-SOX-00016

*In the Matter of*

**JOE COLLINS,**  
*Complainant*

v.

**AMERIPRISE FINANCIAL SERVICES, INC.,**  
*Respondent.*

### **ORDER OF DISMISSAL**

On May 1, 2015, the United States Department of Labor, Office of Administrative Law Judges (“OALJ”) received a letter from Joe Collins (“Complainant”) requesting review of a complaint that Mr. Collins states he filed in July 2009 with the Occupational Safety and Health Administration (“OSHA”) under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (“SOX”), as amended, 18 U.S.C. § 1514A. On May 12, 2015, OALJ received a second letter from Mr. Collins in which he again requested a hearing before an administrative law judge (“ALJ”). Because Mr. Collins did not attach a copy of OSHA’s findings, OALJ contacted OSHA to obtain a copy in order to docket the case. However, it appeared that OSHA considered Mr. Collins’ contact as only an inquiry on a SOX matter over which OSHA did not have jurisdiction, and did not log his communication as a complaint. Consequently, no written findings were issued. A review of Mr. Collins’ hearing request letters likewise suggest that, although OSHA conducted some preliminary inquiry relating to his communication, it did not issue formal findings on the matter under 29 C.F.R. § 1980.105. In fact, Mr. Collins’ letters indicated that his hearing request was based in large part on the allegation that OSHA erred in not pursuing the case further.

Because the regulations indicate that the right to request a hearing before an ALJ originates from the filing of objections to findings issued by OSHA under 29 C.F.R. § 1980.105, it did not initially appear that OALJ had the authority to exercise jurisdiction over this matter.<sup>1</sup> Consequently, I issued an order on May 20, 2015 requesting the parties file briefs showing cause

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<sup>1</sup> See also *J.E. Cooley Farms*, 2014-TLC-54 (ALJ Mar. 26, 2014) (questioning OALJ’s authority to take jurisdiction based on a theory of constructive denial).

why OALJ should not dismiss this matter for lack of jurisdiction. The Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor (“SOL”) was invited to file an amicus brief.

Respondent submitted a response on June 1, 2015, Complainant on June 4, 2015 and the Solicitor of Labor on June 26, 2015. Complainant opposes dismissal while Respondent and the Solicitor submit, albeit for different reasons, that OALJ currently lacks authority to exercise jurisdiction over the matter.

### Discussion

It is undisputed that OSHA has never issued written findings in this matter and that Complainant’s letters to OALJ requesting a hearing were submitted because he believed OSHA erred in not pursuing his case.

OALJ is an administrative court of limited jurisdiction and it only obtains jurisdiction over a matter when a statute or regulation so provides. The regulations implementing Section 806 of SOX provide an opportunity for a party to request a hearing before an administrative law judge within 30 days of that party’s receipt of the findings (and, if applicable, preliminary order) rendered by OSHA pursuant to 29 C.F.R. § 1980.105. *See* 29 C.F.R. § 1980.106(a). In other words, a prerequisite for OALJ to hear a SOX whistleblower case is that OSHA must first issue written findings as to whether or not there is a reasonable cause to believe that a respondent retaliated against a complainant in violation of SOX. There is no provision in the act or its implementing regulations conferring OALJ jurisdiction over a SOX case where, as here, OSHA has not issued written findings.<sup>2</sup>

As SOX and its implementing regulations provide that a Complainant may request a hearing before an ALJ only upon OSHA’s issuance of formal written findings, which has not yet occurred, this tribunal currently lacks authority to exercise jurisdiction over this matter.<sup>3</sup> Accordingly, this case is **DISMISSED WITHOUT PREJUDICE**.

**SO ORDERED.**

**STEPHEN R. HENLEY**  
Acting Chief Administrative Law Judge

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<sup>2</sup> I note that SOX Section 806 does provide a remedy for lack of timely determination by the U.S. Department of Labor on an administrative complaint. Specifically, a complainant has the right to bring an action at law or equity for de novo review in the appropriate district court of the United States if the Secretary has not issued a final decision within 180 days of the filing of the complaint. 18 U.S.C. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114. It does not appear that Mr. Collins has exercised this right.

<sup>3</sup> I further note that SOL indicated in its response to this tribunal that OSHA “will docket [Mr. Collins’] complaint, conduct an investigation to the extent it deems necessary, issue formal written findings, and if necessary, issue a preliminary order.”