U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)

Issue Date: 02 December 2014

CASE NO.: 2015-SOX-00003

In the Matter of:

SUSAN M. HINDS aka JANE DOE,[1]
Complainant,

v.

TOYOTA MOTOR ENGINEERING & MANUFACTURING.,
Respondent.

ORDER DENYING RECONSIDERATION AND OTHER RELIEF

The matters before the undersigned administrative law judge concern filings by both parties postdating the Order of Dismissal issued by the undersigned administrative law judge in the above-captioned matter on November 4, 2014; these filings will be considered cross motions for reconsideration and/or for other relief.[2] As noted in that Order, the instant case ostensibly arises under the employee protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A ("SOX") (with pertinent regulations appearing at Parts 18 and 1980 of Title 29 of the Code of Federal Regulations). However, based on the submissions by both parties, it is unclear that Complainant intended to file a SOX case. In any event, even if this case was not properly docketed as a SOX case, the appropriate remedy would be dismissal and, inasmuch as the case has already been dismissed, the motions for reconsideration and/or for other relief are being denied.

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[1] As I indicated in the Order of Dismissal: Complainant filed her complaint under the name of Jane Doe but she referenced the denial letter from OSHA of September 10, 2014 and the claim number 4-1760-14-074 relating to Susan M. Hinds. Although Complainant has indicated that she wishes to keep her identity secret from the Respondent, OSHA denied that request and provided a copy of the denial letter to the General Counsel for Toyota Motor Engineering & Manufacturing, so the Respondent already knows her identity. In any event, it would be virtually impossible to conduct a case under the employee protection provisions of SOX anonymously as an employer could not respond to allegations that it retaliated against an employee without knowing the employee's identity.

[2] As both parties referenced a November 10, 2014 letter from Respondent's counsel to former Chief Judge Purcell and the original could not be located, Respondent was requested to email another copy to a staff attorney and it was received by the undersigned administrative law judge on December 1, 2014. For unknown reasons, Respondent did not use Complainant's name or the docket number in its new counsel's submission. Respondent appears to have filed its November 10, 2014 letter prior to receiving the Order of Dismissal as it does not reference it. Respondent was properly served with the Order of Dismissal and no notice of appearance was filed by its new counsel prior to issuance of the Order. Another copy of the Order was, however, mailed to new counsel at his request.

Procedural Background

The following procedural background is adapted from the Order of Dismissal.

On September 10, 2014, the Occupational Safety & Health Administration dismissed Complainant Susan M. Hinds' complaint against Toyota Motor Engineer & Manufacturing for failure to provide requested information. In the denial letter, OSHA referenced a complaint filed on June 18, 2014.

Complainant, using the name Jane Doe, appealed the denial of her claim by letters of October 13, 2014 and October 14, 2014 (with attachments), filed on October 17, 2014 and October 20, 2014, respectively. In the October 13, 2014 letter, she indicated that the filing date of her complaint was April 11, 2014. In that regard, she stated that she first contacted OSHA on April 11, 2014 based upon what she perceived to be an imminent danger and that she made followup allegations on June 18, 2014. She further indicated that in August 2014, she had asked OSHA to close its investigation and "forward files to proper governmental agency," citing the provision in the regulations relating to withdrawal of complaints, 29 C.F.R. § 1980.111(a). Later she indicated that she asked OSHA to strike its findings as prejudicial to interested parties. It is unclear exactly what she wanted OSHA to do. However, in the final paragraph of that letter, she stated that she "also requested a letter from OSHA to proceed in a private suit," if she chose to do so. In the October 14, 2014 letter, she indicated that she had filed her complaint on April 11, 2014, by telephone, and she argued that was an acceptable complaint option to file a safety and health complaint. She again indicated that she had also "requested a letter from OSHA to proceed in a private suit" based upon continuing retaliation.[3]

As Complainant indicated that she wished to withdraw this matter and possibly proceed with a private cause of action, I issued an Order of Dismissal on November 4, 2014, which dismissed this case without prejudice to its reinstatement if Complainant failed to file an action in federal district court.

Both parties subsequently filed letters postdating the Order of Dismissal. By letters of November 17, 18, and 20, 2014 (with attachments), inter alia, Complainant indicated that she wished to remain anonymous;[4] sought appointment of legal counsel;[5] asked that Respondent's filings be stricken and its counsel excluded; and reiterated that she had asked OSHA to close its investigation and strike its findings. By letters of November 10 and 21, 2014, [6] counsel for Respondent noted its representation, advised that it had not received a copy of the complaint, and

[3] She stated in the final paragraph of the October 14, 2014 letter: "I also requested a letter from OSHA to proceed in a private suit, if I so choose, please refer as 'continuing actions' of perceived retaliatory amicus [sic] of unnamed Respondents, in a matter currently under investigation, 'inverse bounty', and one of 'imminent danger' to a Whistleblower and zone of interests. I did not feel safer as a WB [whistleblower]. . . ."

[4] See footnote 1 above.

[5] The Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges preclude the appointment of counsel or referral of parties to attorneys. 29 C.F.R. §18.35.

[6] Complainant objected to the fact that the November 10 letter was addressed to former Chief Judge Purcell; however, any correspondence relating to the instant case (apart from that seeking the appointment of a settlement judge) would have been routed to the undersigned judge as the presiding judge in the case under this office's usual procedures. However, the November 10 letter was misplaced. See footnote 2 above.

(in the final paragraph of the November 10, 2014 letter) attempted to make some kind of motion for summary affirmance of the Secretary's September 10, 2014 findings and for dismissal of Complainant's complaint without a hearing. The form of the purported motion is deficient.

Discussion

Although the post-dismissal letter pleadings and questionable motions by both parties are deficient, they share a common goal: dismissal of the instant case. Although Complainant has characterized her request as a request for the case to be "stricken," the case cannot be un-docketed and the only way her objective may be effectively accomplished is by dismissal of the case. Inasmuch as the instant case has already been dismissed, relief may only be obtained through reconsideration proceedings. However, none of the submissions by the parties state a basis for setting aside the November 4, 2014 Order of Dismissal or granting reconsideration. Accordingly, to the extent that they may be deemed to seek reconsideration, the motions lack merit and will therefore be denied. Furthermore, to the extent that the submissions may be deemed to seek other relief, I lack jurisdiction over any such motions (apart from reinstatement of the case), as the case has been dismissed without prejudice to its reinstatement. Inasmuch as there is no basis for setting aside the Order of Dismissal and neither party has sought reinstatement of the case, there is no active case before me and any motions for any other relief will also be denied.

Any further submissions by the parties, with the exception of a motion to reinstate the above-captioned matter, will be filed without further action by this tribunal. As this Order is a final resolution of the post-hearing motions, a Notice of Appeal Rights is being provided. Accordingly,

ORDER

IT IS HEREBY ORDERED that the motions for reconsideration or other relief filed by the parties are **DENIED**.

Digitally signed by Pamela Lakes
DN: CN=Pamela Lakes,
OU=Administrative Law Judge, O=Office
of Administrative Law Judges,
L=Washington, S=DC, C=US
Location: Washington DC

PAMELA J. LAKES
Administrative Law Judge

Washington, D.C.

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 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 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(a). Your Petition must specifically identify the findings, 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).

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. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1980.110(a).

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(e) and 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 thirty (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).