



**Issue Date: 07 June 2018**

*In the Matter of*  
**EARL BAKER**  
*Complainant*

v.

Case Number **2017 SOX 00042**

**SMITH & WESSON**  
*Respondent*

John Lee, Esquire  
*For Complainant*

Connie N. Bertram, Esquire and Emilie Adams, Esquire  
*For Respondent*

**DECISION AND ORDER OF DISMISSAL**  
***BY OPERATION OF THE “KICK-OUT” PROVISION***

This proceeding arises from a complaint of discrimination filed under 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.A. § 1514A (West 2004) and the procedural regulations found at 29 C.F.R. Part 1980. This SOX case was initially to have been decided “on the record” as Complainant was pro se and waived an oral hearing. A settlement judge had been appointed but attempts at a resolution were not productive. However, he has since engaged Mr. Lee and since his entry of appearance, the parties and I have had discussions via the internet.

On June 1, 2018, Complainant filed a complaint in the United States District Court for the Northern District of Illinois at Case: 1:18-cv-03847.

29 C.F.R. § 1980.114 sets forth: District court jurisdiction over retaliation complaints.

(a) If the Secretary has not issued a final decision within 180 days of the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy. A party to an action brought under this paragraph shall be entitled to trial by jury.

(b) A proceeding under paragraph (a) of this section shall be governed by the same legal burdens of proof specified in § 1980.109. An employee prevailing in any action under paragraph (a) of this section shall be entitled to all relief necessary to make the employee whole, including:

- (1) Reinstatement with the same seniority status that the employee would have had, but for the retaliation;
- (2) The amount of back pay, with interest;
- (3) Compensation for any special damages sustained as a result of the retaliation; and
- (4) Litigation costs, expert witness fees, and reasonable attorney fees.

(c) Within seven days after filing a complaint in federal court, a complainant must file with OSHA, the ALJ, or the ARB, depending on where the proceeding is pending, a copy of the file-stamped complaint. A copy of the complaint also must be served on the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

I find that Complainant has followed the above procedure. A review shows that the USDC complaint is based on the same facts that constituted his action before the Office of Administrative Law Judges, and therefore, jurisdiction in the latter has been divested. *See Stone v. Duke Energy Corp*, 432 F.3d 320(5th Cir. 2005); *see also Kelly v. Sonic Automotive, Inc.*, ARB No. 08-027 (Dec. 17, 2008).

All of my orders regarding discovery and a briefing schedule are now moot, and are hereby **VACATED**.

Because I no longer have jurisdiction over the instant matter, the claim is hereby **DISMISSED**.

**DANIEL F. SOLOMON**  
**ADMINISTRATIVE LAW JUDGE**

