



Issue Date: 18 August 2017

Case No.: 2017-SOX-00023

In the Matter of

**BRETT WINGO,
Complainant**

v.

**SOUTHERN COMPANY,
Respondent**

ORDER OF DISMISSAL

On May 12, 2107, Complainant filed a notice stating his intent to withdraw the above-captioned matter for the purposes of proceeding in United States District Court. On August 11, 2017, the undersigned received a copy of Complainant’s “Complaint for Monetary Relief and Jury Demand” filed in the Northern District of Alabama on August 8, 2017.

This matter arises under the employee protection provisions of the Sarbanes-Oxley Act of 2002 (the “Act”), 18 U.S.C. § 1514A. The statute provides:

A person who alleges discharge or other discrimination in violation of subsection (a) may seek relief under subsection (c), by—

(A) filing a complaint with the Secretary of Labor; or

(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the complainant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

18 U.S.C. §1514A(b)(1). The corresponding regulation is found at 29 C.F.R. § 1980.114. The regulation requires that “[w]ithin seven days after filing a complaint in federal court, a complainant must file with ... the ALJ ... a copy of the file stamped complaint” and the complainant must also serve a copy of the complaint on certain other officials. 29 C.F.R. § 1980.114(c).

Complainant filed his complaint with OSHA on February 14, 2015. No decision has been issued within 180 days of the filing of the complaint, and the delay was not caused by bad faith

of the Complainant. Accordingly, Complainant has a right to file a complaint in federal district court. 18 U.S.C. § 1514A(b)(1); 29 C.F.R. § 1980.114(a). If the complainant commences an action in federal district court, the Secretary of Labor will no longer have jurisdiction over this matter. *See Stone v. Duke Energy Corp.*, 432 F.3d 320 (4th Cir. 2005).

Consequently, the complaint filed in this matter under the Sarbanes-Oxley Act is dismissed with prejudice.

SO ORDERED this day at Covington, Louisiana.

TRACY A. DALY
Administrative Law Judge