



Issue Date: 27 January 2020

Case No: 2018-SOX-00027
OSHA No: 3-0050-18-085

In the Matter of:

MOTANGA E. OBIA,
Complainant,

v.

JP MORGAN BANK,
Respondent.

DECISION AND ORDER OF DISMISSAL

On January 13, 2020, I received Complainant’s Motion for Dismissal for Lack of Jurisdiction (“Motion”) and Respondent’s Response to Complainant’s Motion for Dismissal for Lack of Jurisdiction (“Response”). The Motion states that “Complainant ... moves this Tribunal to grant the Complainant the opportunity to move this case to [d]istrict court in accordance with the ‘Kick-out Provision’” and “Complainant seeks to transfer this case to the District Court through the Kick-Out Provision....” Motion at 1. I am considering the Motion a request to dismiss this matter under 29 C.F.R. § 1980.114(a) and 29 C.F.R. § 1985.114(a).¹ In relevant part, the Response states that “Respondent does not oppose Complainant’s request to voluntarily dismiss this action....” Response at 1.

On December 11, 2019, I received a copy of Complainant’s complaint styled as filed in the District Court for the District of Columbia, including what appears to be a District Court case number. The document I received, however, does not have a stamp from the District Court showing that it was filed. See 29 C.F.R. § 1980.114(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.”). Accordingly, in this Decision and Order I express no opinion as to whether Complainant has filed a complaint in federal district court. (As outlined below, I simply recount that Complainant has represented that he has done so.)

¹ Given that Complainant has moved to dismiss this matter, my statement in my December 2, 2019 order in this matter that “depending on the contents of the federal district court complaint that I am ordering Complainant to provide..., I may or may not subsequently issue an Order to Show Cause why this matter should not be dismissed...” is moot. See December 2, 2019 order at 2.

As Complainant in his Motion stated that is asking me “to grant ... [him] the opportunity to move this case to [d]istrict court,” I conclude that Complainant understands that I have no authority to move this case to district court, and that all I can do is dismiss this matter in light of his filing an action in district court. This conclusion is bolstered by Complainant’s statement that the reasons for his having filed the Motion include “an already filed case in District Court which arises from the same facts in relation to SOX....” Motion, at 1.

This matter arises under the employee protection provisions of the Sarbanes-Oxley Act of 2002 (“SOX”), 18 U.S.C. § 1514A, and also the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”), codified at 12 U.S.C. § 5567.² The SOX 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 claimant, 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). *See also* 12 U.S.C. § 5567 and 29 C.F.R. § 1985.114 (Dodd-Frank provisions).

Complainant filed complaints with OSHA on December 2, 2017, and January 10, 2018. No decision has been issued within 180 days (SOX) or 210 days (Dodd-Frank) of these filings, 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); 12 U.S.C. § 5567; 29 C.F.R. § 1985.114(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) (case below 2003-SOX-12).

To date, I have not received definitive evidence that Complainant has filed an action in federal district court because all I have received is a complaint that appears to have a district court case number but that is not stamped “filed” by the district court. Some administrative law judges have required that a complainant submit a copy of the complaint filed with the appropriate U.S. District Court before dismissing the action; others have not. *Compare, e.g., Evans v. Liberty Medical Supply, Inc.*, 2007-SOX-00022 (ALJ July 2, 2007) *with Miley v.*

² As noted in my order of November 26, 2019, in this matter, “this matter encompass[es] both Complainant’s ... SOX ... complaint and his Dodd-Frank complaint. November 26, 2019 order, at 2.

Emerachem, LLC, 2007-SOX-00031 (ALJ June 15, 2007). Others have simply closed the file subject to reopening. *See, e.g., Roberts v. Weatherford Int'l, Ltd.*, 2008-SOX-00069 (ALJ Sept. 25, 2008). As outlined above, Complainant represents, by submitting a copy of a complaint styled as filed in the United States District Court for the District of Columbia and including what appears to be a district court civil case number and by stating that there is “an already filed case in District Court which arises from the same facts in relation[] to [SOX]”, that he has filed an action in federal district court.

Based on Complainant’s representations, this matter is being dismissed. In the event Complainant has not filed, or does not file, an action in federal district court, any party may move to set aside this Decision and Order of Dismissal and reopen these proceedings. The parties are advised that Complainant’s failure to file an action in federal district court is the sole ground upon which a party may move to set aside this Decision and Order of Dismissal and reopen these proceedings.

ORDER

IT IS HEREBY ORDERED that the complaint filed by Complainant Motanga E. Obia under the Sarbanes-Oxley Act and the Dodd-Frank Act is **DISMISSED WITHOUT PREJUDICE** to its reinstatement if Complainant has not filed, or does not file, an action in federal district court.

SO ORDERED.

PAUL R. ALMANZA
Associate Chief Administrative Law Judge