



**Issue Date: 07 August 2019**

**CASE NO.: 2019-SOX-00017**

**IN THE MATTER OF**

**SHAWN GLASSER,  
Complainant**

**v.**

**CHIYODA INTERNATIONAL CORPORATION,  
Respondent**

**ORDER GRANTING SUMMARY DECISION, DISMISSING  
COMPLAINT AND CANCELLING HEARING**

This case arises out of Section 806 of the Sarbanes-Oxley Act of 2002 (“SOX” or “the Act”), technically known as the Corporate and Criminal Fraud Accountability Act, P.L. 107-204, codified at 18 U.S.C. § 1514A, *et seq.*, and the employee protective provisions promulgated thereunder at 29 C.F.R. Part 1980. Under SOX, the Secretary of Labor is empowered to investigate and determine “whistleblower” complaints filed by employees of publicly-traded companies who are allegedly discharged, retaliated against, or otherwise discriminated against, with regard to their terms and conditions of employment, for providing information about fraud against company shareholders to supervisors, federal agencies, or members of Congress.

**BACKGROUND**

On October 11, 2018, Shawn Glasser (Complainant) filed his original complaint with the Occupational Safety and Health Administration (OSHA) where he alleged retaliation by his former employer, Chiyoda International Corporation (Respondent), after he expressed concerns of IRS Code violations by Respondent and Chiyoda Corporation (CI), its parent corporation. (Complaint, p. 2). Complainant made no allegations of wrongdoing by any other entity.

On November 23, 2018, the OSHA Assistant Regional Administrator dismissed the complaint because neither Complainant nor Respondent is covered under SOX. On December 21, 2018, Complainant filed an objection to OSHA’s findings and a request for a hearing.

On July 15, 2019, Respondent filed a Motion for Summary Decision because Respondent is not a covered employer and Complainant is not a covered employee under the provisions of SOX. Complainant filed a Response on August 5, 2019.

## SUMMARY DECISION STANDARD

Summary decision is appropriate “if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.” 29 C.F.R. § 18.72; *see also Williams v. Dallas Indep. Sch. Dist.*, ARB No. 12-024, 2012 WL 6849447 (Dec. 28, 2012). At the summary decision stage of a STAA case, the administrative law judge assesses the evidence “for the limited purpose of deciding whether it shows a genuine issue as to a material fact...” If Complainant fails to establish an element essential to his case, there can be “no genuine issue as to a material fact since a complete failure of proof concerning an essential element of the non-moving party’s case necessarily renders all other facts immaterial.” *Coates v. Southeast Milk, Inc.*, ARB No. 05-050, 2007 WL 4107740 at 3-4 (Jul. 31, 2007).

In evaluating if Respondent is entitled to a summary decision in this matter, all facts and reasonable inferences therefrom are considered in the light most favorable to the non-moving Complainant. *Battle v. Seibles Bruce Ins. Co.*, 288 F.3d 596 (4th Cir. 2002), citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). “However, even when all evidence is viewed in the light most favorable to the non-moving party, the non-moving party cannot defeat a properly supported summary judgment motion without presenting ‘significant probative evidence.’” *Pueschel v. Peters*, 340 Fed. Appx 858, 860 (4th Cir. 2009) (unpub.), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)). A party opposing a motion for summary decision “may not rest upon the mere allegations or denials of [a] pleading; [the response] must set forth specific facts showing that there is a genuine issue of fact for the hearing.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

When the information submitted for consideration with a motion for summary decision and the response to that motion demonstrates that there is no genuine issue as to any material fact, the request for summary decision should be granted. Where a genuine question of a material fact remains, a motion for summary decision must be denied.

## JURISDICTION UNDER SOX

Section 806 of SOX, codified at 18 U.S.C. § 1514A, creates a private cause of action for employees of publicly-traded companies who are retaliated against for engaging in certain protected activity. Section 1514A(a) states, in relevant part:

(a) No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company, or nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend,

threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

(A) a Federal regulatory or law enforcement agency;

(B) any Member of Congress or any committee of Congress; or

(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

18 U.S.C. § 1514A(a).

A **company** means “any company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or any company required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company.” 29 C.F.R. § 1980.101(d).

A **covered person** means “any company, including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company, ... or any officer, employee, contractor, subcontractor, or agent of such company....” 29 C.F.R. § 1980.101(f).

An **employee** is means “an individual presently or formerly working for a covered person, an individual applying to work for a covered person, or an individual whose employment could be affected by a covered person.” 29 C.F.R. § 1980.101(g).

Thus, the aggrieved employee’s first responsibility is to show that SOX covered his employer. In his reply to Respondent’s Motion for Summary Decision Complainant alleges that he

discovered and reported fraudulent activity involving CI and Respondent. CI is a business incorporated in Japan that is licensed to do business in Texas and Louisiana.

Respondent is a wholly owned subsidiary of CI. Respondent is incorporated in Washington, headquartered in Texas, and authorized to do business in the same jurisdictions as CI. CI is publicly traded in Japan on the Tokyo Stock Exchange and is also publically traded in the United States through American Depository Receipts listed over-the-counter.

Nowhere in his Reply does Complainant address the issue of whether Respondent or CI has a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)). The only evidence produced on this issue is the Declaration of T. Ishikawa. (Ex D). Therein he declares

Respondent's shares are not publically traded. It has no securities registered under section 12 of the U.S. Securities Exchange Act and is not required to file any information or reports under section 15(d) of the Securities Exchange Act.

CI's shares are not listed on any stock exchange other than the Tokyo Stock Exchange. Its securities are not registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) and CI is not required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).

I find that the undisputed evidence shows that neither Respondent nor its parent has securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) and that neither Respondent nor its parent is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)). All the evidence before me supports this fact. Complainant did not put forth any evidence indicating that ADRs would make a company subject to SOX. There is no way to read this evidence in any light that would be favorable to Complainant. Accordingly, **IT IS HEREBY ORDERED** that Respondent's Motion for Summary Decision is **GRANTED** and this matter is **DISMISSED**.

**YOU ARE HEREBY NOTIFIED** that a formal hearing on the merits of the above proceeding which was scheduled to commence on **October 16, 2019**, in **Houston, Texas**, is **CANCELLED**.

**SO ORDERED.**

**LARRY W. PRICE**  
**ADMINISTRATIVE LAW JUDGE**

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review (“Petition”) with the Administrative Review Board (“Board”) within fourteen (14) 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](mailto: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 should identify the legal 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, Division of Fair Labor Standards, U.S. Department of Labor. *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).