



Issue Date: 15 August 2019

CASE NO.: 2019-SOX-00037

In the Matter of:

CHARLES OAKES,
Complainant,

vs.

**NATIONAL TECHNOLOGY & ENERGY
SOLUTIONS OF SANDIA, HONEYWELL
INTERNATIONAL, INC.,**
Respondent.

ORDER OF DISMISSAL

This is a claim under the employee-protection provisions of the Corporate and Criminal Fraud Accountability Act of 2002 (the “Sarbanes-Oxley Act” or “SOX”), 18 U.S.C. §1514A, and regulations at 29 C.F.R. Part 1980. It is currently set for hearing in Carlsbad, New Mexico, on November 13, 2019.

Respondent has filed a Motion to Dismiss. Complainant filed no timely opposition to the Motion, but on July 24, 2019, filed a “Notice Regarding Voluntary Dismissal Without Prejudice” in which he stated an intention to file a Motion to Dismiss without prejudice at some time in the future, and his belief that Respondent would not oppose his motion when he made it. He further contended his motion would make Respondent’s motion moot. On July 26, 2019, Complainant filed his “Motion to Withdraw Claim Without Prejudice,” citing 29 C.F.R. section 24.111.¹

On July 29, 2019, I issued an Order to Show Cause directing the parties to state any opposition they had to dismissal. In response, Complainant contends a dismissal without prejudice – which would give him an opportunity to amend any defect in his pleadings – is more appropriate than a dismissal with prejudice, based

¹ Section 24.111 does not apply to proceedings under the Sarbanes-Oxley Act. 29 C.F.R. § 24.100, subsection (a). Instead, *see* 29 C.F.R. § 1980.111, discussed below.

on the current state of the pleadings. Respondent filed no response to the Order to Show Cause.

Complainant's Motion

Claims for violation of 18 U.S.C. section 1514A are governed by federal regulation set forth in 29 C.F.R. Part 1980.

Under 29 C.F.R. section 1980.103, subsection (d), a Complainant must file his or her complaint with OSHA “[w]ithin 180 days after an alleged violation of the Act occurs or after the date on which the employer became aware of the alleged violation of the Act.” Under 20 C.F.R. section 1980.103, subsection (b), “[n]o particular form of complaint is required. A complaint may be filed orally or in writing. Oral complaints will be reduced to writing by OSHA. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language.”

While the OSHA investigation is underway, a complainant “may withdraw his or her complaint by notifying OSHA, orally or in writing, of his or her withdrawal. OSHA will then confirm in writing the complainant’s desire to withdraw and determine whether to approve the withdrawal.” 29 C.F.R. section 1980.111, subsection (a). But in this case, the OSHA investigation is long since over, one or both of the parties has requested a hearing, and the matter is now before the Office of Administrative Law Judges. Because that is so, the complainant cannot now simply “withdraw” his complaint. Rather, he can only “*withdraw objections to the Assistant Secretary’s findings and/or order* by filing a written withdrawal with the ALJ. . . . If the ALJ approves a request to withdraw objections to the Assistant Secretary’s findings and/or order, and there are no other pending objections, *the Assistant Secretary’s findings and/or order will become the final order of the Secretary.*” 29 C.F.R. section 1980.111, subsection (c) (emphasis added).

In this case, Complainant wants neither to proceed, nor to allow the Assistant Secretary’s (that is, OSHA’s) preliminary findings and order to become final. At this stage, I cannot enter an Order of Dismissal Without Prejudice which would allow the Complainant to re-file the same claim later. Complainant must choose either to go forward, or to withdraw his objections to the preliminary finding and order. Neither his Motion, nor his response to my Order to Show Cause, chooses one of those permissible alternatives. Accordingly, Complainant’s Motion is denied.

The Court's Own Motion

In my July 29, 2019, Order to Show Cause, I notified the parties that if neither of them established good cause in response to that Order, I would dismiss this matter on my own motion.

Neither party having established good cause, I now dismiss this matter on my own motion. This action neither shortens nor extends the 180-day filing deadline set forth in 29 C.F.R. section 1980.1093, subsection (d).

SO ORDERED.

CHRISTOPHER LARSEN
Administrative Law Judge