



Issue Date: 02 July 2020

Case No.: 2020-SOX-00012

In the Matter of:

LOUIS LOREZETTI,
Claimant,

v.

WORLDPAY, INC.,
Employer.

**ORDER DENYING SECOND MOTION FOR EXTENSION OF TIME
AND GRANTING MOTION TO DISMISS**

This matter arises under the Corporate Fraud and Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A. The formal hearing is scheduled for December 8, 2020 in Cincinnati, Ohio.

On April 15, 2020, Respondent filed a Motion to Dismiss the case. On April 16, 2020, I issued an Order requiring Complainant to file a brief in opposition to the Motion to Dismiss by May 1, 2020.

On May 1, 2020, Complainant sent a letter to me in which Complainant stated that he wished to retain counsel to represent him in this matter, but that the public health emergency was making it difficult for him to retain counsel. I treated Complainant's May 1, 2020 letter as a Motion for Extension of Time to oppose Respondent's Motion to Dismiss. I granted the Motion for Extension of Time, and gave Complainant until July 1, 2020 to file a brief in opposition to Respondent's Motion to Dismiss. I noted in the Order Granting the Motion for Extension of Time that "**NO FURTHER EXTENSIONS OF TIME WILL BE PERMITTED.**" (emphasis in original)

At 11:38 p.m. on July 1, 2020, Complainant sent me an email asking for another extension of time to oppose Respondent's Motion to Dismiss. I treat Complainant's email of July 1, 2020 as a Second Motion for Extension of Time. Complainant's July 1, 2020 Second Motion for Extension of Time is **DENIED**. The issue presented by Respondent's Motion to Dismiss is straightforward: did the Findings and Order issued by the Occupational Safety and Health Administration ("OSHA") dismissing the complaint become final and effective before Complainant filed his Objections and Request for Hearing? In other words, did Complainant file his Objections and Request for Hearing with the Office of Administrative Law Judges in a timely manner? I am able to resolve that issue by: (1) noting the date on which OSHA issued the Findings and Order (December 10, 2019); (2) reviewing the OSHA Findings and Order to make certain OSHA clearly informed Complainant that the Findings and Order needed to be appealed

within 30 days (yes); (3) determining the date on which Complainant actually filed his Objections and Request for Hearing (January 15, 2020); computing the number of days between December 11, 2019 and January 15, 2020 (36); and (4) reviewing the applicable regulations which govern the timeliness of Complainant's filing (29 C.F.R. §§ 1980.105, 1980.106 and 18.32(a) and (c)). These are fixed points of reference which are ascertainable without dispute. I do not find that granting Complainant an additional extension of time to oppose the Motion to Dismiss would serve any purpose, as Complainant is without the ability to alter the calendar facts of this case, and ultimately cannot dispute that the OSHA Findings and Order dismissing his complaint became final and effective when he did not submit a timely Objection and Request for Hearing. Understanding that Complainant is not represented by counsel, and recognizing that the public health emergency has interrupted the normal flow of commerce, I provided Complainant with a generous extension of time in order to allow him to address and oppose the Motion to Dismiss. I explicitly advised Complainant in my May 1, 2020 Order granting him a 60-day extension of time that I would not grant him any more time to oppose the motion. I believe I have afforded Complainant with a fair opportunity to oppose the pending Motion to Dismiss. I do not see that granting Complainant more time will allow him to present any fact or argument that changes the landscape of this case: Complainant did not timely object to the Findings and Order issued by OSHA on December 10, 2019. None of the communications sent to me by Complainant suggest that he has a viable defense to the Motion to Dismiss.

I have reviewed Respondent's Motion to Dismiss and the attachments thereto. I find that the Findings and Preliminary Order required by 29 C.F.R. § 1980.105 were issued on December 10, 2019. I find that Complainant was informed in writing that the Finding and Preliminary Order would "become final" unless Complainant's Objections to these Findings and Preliminary Order and Request for Hearing was submitted to the Office of Administrative Law Judges within 30 days. Allowing for additional time for the Findings and Preliminary Order to reach Complainant by mail, I find the last date for Complainant to submit his Objections and Request for Hearing was January 13, 2020. I find that Complainant did not submit his Objections and Request for Hearing on or prior to January 13, 2020, and that the Findings and Preliminary Order dismissing Complainant's complaint thus became final and effective on January 13, 2020. 29 C.F.R. § 1980.105(c). I find that Complainant did not submit his Objections and Request for Hearing until January 15, 2020.

Complainant's Objections and Request for Hearing were not timely submitted to the Office of Administrative Law Judges. Respondent's Motion to Dismiss is **GRANTED**. This case is **DISMISSED** with prejudice.

Steven D. Bell
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) 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, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; 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).

When 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).

If filing paper copies, 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 an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file 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. If you e-File your petition and opening brief, only one copy need be uploaded.

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 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 may include 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. If you e-File your responsive brief, only one copy need be uploaded.

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 you e-File your reply brief, only one copy need be uploaded.

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).