



**Issue Date: 16 June 2020**

**CASE NO.: 2020-SOX-17**

**VINAY YADAV,**  
Pro Se Complainant,

v.

**FROST BANK,**  
Respondent.

### **ORDER OF DISMISSAL**

This matter involves a complaint under the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX)<sup>1</sup> and regulations promulgated thereunder<sup>2</sup> brought by Complainant against Respondent. On 8 Jan 20, Complainant filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that Respondent had terminated his employment on 8 Jul 19 in violation of SOX. OSHA dismissed the complaint, Complainant requested a hearing *de novo*, and the case was referred to me.

I directed Complainant to file a Bill of Particulars so the parties could accurately identify the alleged protected activities and adverse actions. Complainant's filing was a rambling narrative of 30 pages and Respondent filed a Motion to Dismiss the complaint as failing to state a claim upon which relief could be granted, since Complainant's own pleadings establish that it was untimely. Complainant filed his opposition to the Motion to Dismiss.

Although the Bill of Particulars consisted of far more argument and attacks on Respondent than any specific factual allegations identifying alleged protected activity and adverse action, I extracted a list of alleged protected activities taking place between 20 Mar 18 and December 2018/January 2019. I also identified a list of alleged adverse actions taking place between 20 Mar 18 and 26 Feb 20. I concluded that since Complainant did not file his OSHA complaint until 8 Jan 20, it was untimely as to any adverse action occurring before 12 Jul 19. Consequently, I granted the motion to dismiss the complaint as to those adverse actions.

That left as possible actionable adverse action only very vague allegations about harassment and disclosure of derogatory information after 12 Jul 19. Those allegations were insufficient to state a claim upon which relief could be granted, but I withheld ruling on Respondent's motion in its entirety and allowed Complainant an opportunity to explain why he may have yet had a cognizable cause of action.

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<sup>1</sup> 18 U.S.C. § 1514A.

<sup>2</sup> 29 C.F.R. § 1980.

Since the allegations were very vague and confusing, I ordered Complainant to clarify them. I specifically instructed him to identify the dates upon which he alleges Respondent released or communicated any such information about him, to whom it released the information, and what the information was. I cautioned him not to re-visit his opposition to the motion or Respondent's misconduct. To help him focus on responding to my order, I limited him to no more than five pages. Nonetheless, he filed a 17 page response.

In addition to exceeding the length limitation, Complainant also failed to follow my direction to solely describe and specify his factual allegations as to any adverse action taking place after 12 Jul 19. A large majority of his filing is no more than a reprise of his allegations as to Respondent's misconduct and his protected activity. Complainant once again described Respondent's role in helping the state obtain through fraud a criminal conviction against him. Complainant failed to identify the timing or specify the facts related to any harassment or communication of derogatory information by Respondent.

Instead, Complainant once again argued that the applicable statute limitations for filing his OSHA complaint was not 180 days, but a period of up to five years. He also conceded that OSHA's investigation properly identified the adverse action date as the date of his conviction on 8 Jul 19. Finally, he submitted that equitable tolling applied because he did not have counsel. He neither properly responded to my order nor alleged any adverse action that would have made his OSHA filing timely. As a result, Complainant has failed to state a case upon which relief can be granted. Based on the reasoning herein and in my previous order granting Respondent's motion in part, the complaint is denied in its entirety.

**SO ORDERED.**

**PATRICK M. ROSENOW**  
**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).

