

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 26 April 2016

**CASE NOS.: 2016-SPA-1
2016-SPA-2**

IN THE MATTER OF

JAMES PATTERSON

and

ANTONIO MAY

Complainants

v.

DIAMOND OFFSHORE, INC.

Respondent

**ORDER DISMISSING COMPLAINT BECAUSE
COMPLAINANTS HAVE FILED A COMPLAINT
IN THE U.S. DISTRICT COURT AND
CANCELLING FORMAL HEARING**

This proceeding arises under the Seaman's Protection Act ("SPA"), 46 U.S.C. § 2114, as amended by Section 611 of the Coast Guard Authorization Act of 2010, P.L. 111-281, (herein "SPA" or "the Act"), and the regulations promulgated thereunder at 29 C.F.R. Part 1986, which are employee protective provisions.

On September 21, 2015, Complainants filed timely complaints with the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that their former employer retaliated by discharging them for making complaints regarding various serious safety violations that posed imminent risk to him and others. After conducting an investigation, OSHA's Regional Administrator issued a final determination letter on September 25, 2015. The Regional Administrator concluded that

the evidence showed that the Respondent's vessel was "both in foreign waters and flying a foreign flag" and thus "neither OSHA nor the United States Coast Guard has jurisdiction." Accordingly, Complainants failed to allege a **prima facie** complaint and the Regional Administrator concluded that there was no reasonable cause to believe that Respondent violated SPA. On October 19, 2015, Complainants timely filed objections to the Secretary's Findings and Order dismissing the claim. By notice issued December 23, 2015, this matter is currently scheduled for formal hearing on May 16, 2016 in Houston, Texas.

On April 25, 2016, Complainants forwarded a copy of their federal lawsuit filed against Respondent on April 19, 2016, in the United States District Court for the Southern District of Texas, Galveston Division, in Case No. 3:16-cv-00103.

The rules governing SPA permits Complainants to file an action in federal district court if the Secretary has not issued a final order and "210 days have passed since the filing of the complaint." In such a case, complainants may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy." 29 C.F.R. § 1986.114(a).

The Department of Labor has not issued a final decision within 210 days of the filing of the administrative complaint on September 21, 2015. Moreover, I find there is no evidence of record which indicates that there has been any delay due to the bad faith of the Complainants.

As the Complainants have filed a complaint in the United States District Court based on the same facts that constituted their action before the Office of Administrative Law Judges, jurisdiction in the latter has been divested. See Stone v. Duke Energy Corp., 432 F.3d 320 (5th Cir. 2005) (Sarbanes-Oxley case); see also Kelley v. Sonic Automotive, Inc. ARB No. 8-027 (Dec. 17, 2008) (Sarbanes-Oxley case).¹

Consequently, based on the foregoing, I find I no longer have jurisdiction over the instant matter and hereby dismiss Complainants' Complaint before the Office of Administrative Law Judges based on lack of jurisdiction.

¹ Similar to the governing statute in this case, the employee protection provision of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A(b)(1)(B) permits an employee to file an action in district court if the Secretary has not rendered a final decision within a specific time period.

ORDER

IT IS HEREBY ORDERED, consistent with the regulations, the above captioned matter is hereby **DISMISSED** with prejudice without costs awarded to either party.

The formal hearing presently scheduled for May 16, 2016, is **CANCELLED**.

ORDERED this 26th day of April, 2016, at Covington, Louisiana.

LEE J. ROMERO, JR.
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. § 1986.110(a). Your Petition must specifically identify the findings, 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. § 1986.110(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, in cases in which the Assistant

Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. See 29 C.F.R. § 1986.110(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. §§ 1986.109(e) and 1986.110(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. § 1986.110(b).