



Issue Date: 23 February 2017

CASE No.: 2016-SOX-00040

In the Matter of:

MICHAEL OPELA,
Complainant,

v.

WAUSAU WINDOW AND WALL,
Respondent.

ORDER DISMISSING COMPLAINT AND CANCELING HEARING

Complainant has filed suit in a United States District Court for review of his retaliation complaints and has requested via electronic mail that “all proceedings before the Department be terminated” (See attached electronic mail).

I have previously dismissed all complaints arising under the Consumer Product Safety Improvement Act (CPSIA) filed by Complainant against Apogee Enterprises, Inc., Tubelite, Alumicor, Linetec, and Harmon in an order issued on February 2, 2017. As Complainant has not filed timely petition for review of this decision with the Administrative Review Board, these dismissals constitute the final order of the Secretary of Labor. 29 C.F.R. §§ 1983.109(e).¹ As such, these complaints are no longer before the undersigned.

By the same order, I also dismissed the complaint under the Sarbanes-Oxley Act (SOX) as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act filed by Complainant against Apogee Enterprises, Inc. As is the case with the CPSIA complaints addressed above, this dismissal is now the final order of the

¹ I also note that final orders of the Secretary are not subject to judicial review in any civil proceeding, see 15 U.S.C. § 2087(b)(5)(B); 29 C.F.R. § 1983.112(b), except that within 60 days after the issuance of a final order, “any person adversely affected or aggrieved by a final order . . . may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation.” See 15 U.S.C. 2087(b)(5)(A); 29 C.F.R. § 112(a). Jurisdiction lies with the district court only when the Secretary of Labor has not yet issued a final decision. See 15 U.S.C. § 2087(b)(4); 29 C.F.R. § 1983.114(a).

Secretary in the absence of a timely petition for review of this decision with the Administrative Review Board. See 29 C.F.R. § 1980.109(e).² As such, these complaints are also no longer before the undersigned.

The only complaint still “before the Department” is the one Complainant has filed against Wausau Window and Wall under the CPSIA.³ As to the requested relief concerning the remaining complaint arising under CPSIA, Complainant may bring such an action in district court if “the Secretary has not issued a final decision within 210 days after the filing of the complaint.” 15 U.S.C. § 2087(b)(4); see 29 C.F.R. § 1983.114. As more than 210 days have passed since Complainant filed the surviving complaint against Respondent and there is no final decision in this matter, the requested relief is lawful and appropriate. Accordingly, the complaint filed by Complainant against Wausau Window and Wall under the CPSIA is hereby **DISMISSED**. The hearing currently scheduled in this matter to begin on March 21, 2017, at or near Eau Claire, Wisconsin, is hereby **CANCELED**.

SO ORDERED:

WILLIAM T. BARTO
Administrative Law Judge

Encls

- 1- Email from Complainant’s Counsel
- 2 – Complaint provided by Complainant’s Counsel

² As noted in connection with the dismissed CPSIA complaints, a final order in a SOX case “is not subject to judicial review in any . . . other civil proceeding,” *id.* § 1980.112(b), except that within 60 days after the issuance of a final order a complainant may appeal to the appropriate Court of Appeals as described above in connection with CPSIA complaints. See *id.* § 1980.112(a). Jurisdiction lies with the district court only when the Secretary of Labor has not issued a final order. See 18 U.S.C. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114(a).

³ Complainant’s suit filed in district court purports to add Apogee Wausau Group as a party to his suit under the CPSIA. However, jurisdiction lies with the district court for such complaints only after Complainant has filed the complaint with the Department of Labor and there has been no final decision by the Secretary. See 15 U.S.C. § 2087(b)(4); 29 C.F.R. § 1983.114(a). There is no evidence before the undersigned that such a complaint against Apogee Wausau Group has been filed with the Department of Labor or that Complainant has otherwise exhausted his administrative remedies against this party under CPSIA.