

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

CAMILO JOSÉ SÁNCHEZ RAMOS,

ARB CASE NO. 2022-0042

COMPLAINANT,

ALJ CASE NO. 2022-SOX-00004

v.

DATE: October 24, 2022

GLOBANT S.A.,

RESPONDENT.

Appearances:

For the Complainant:

Camilo José Sánchez Ramos; *Pro Se*; San Andrés Cholula, Puebla, Mexico

For the Respondent:

Maria A. Garrett, Esq.; *DLA Piper LLP (US)*; Dallas, Texas

Before: HARTHILL, Chief Administrative Appeals Judge, and BURRELL, Administrative Appeals Judge

ORDER OF DISMISSAL

PER CURIAM:

This case arises under the whistleblower protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act (SOX), as amended, and its implementing regulations.¹ On May 25, 2022, Complainant Camilo José Sánchez Ramos (Ramos) filed a Petition for

¹ 18 U.S.C. § 1514A; 29 C.F.R. Part 1980 (2021).

Review with the Administrative Review Board (Board), in which he appealed a United States Department of Labor Administrative Law Judge's Decision and Order Granting Summary Decision and Dismissing Complaint.

On June 26, 2022, in lieu of an opening brief, Ramos filed a "Motion Requesting the Honorable ARB Permission to Remove the Claim to US Federal Court Pursuant to 18 U.S Code § 1514A (b)(1)(B)." The body of the motion read, in its entirety: "Pursuant to 18 U.S Code § 1514A (b)(1)(B), I am respectfully requesting The Honorable Administrative Review Board permission to remove this claim to bring my claims before 'the appropriate district Court of the United States.'"

The provision Ramos cited, 18 U.S.C § 1514(b)(1)(B), provides that a complainant may seek relief "if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, [by] bringing an action at law or equity for de novo review in the appropriate district court of the United States" Accordingly, on June 28, 2022, the Board issued an Order of Clarification stating that "if the complainant believes he is entitled to remove his case by filing in federal court, he may do so and he does not require the permission of the Board."

Over the ensuing several weeks, Ramos did not file a copy of a federal complaint with the Board or otherwise indicate to the Board that he had filed a claim in district court. Therefore, on August 11, 2022, the Board issued an Order to Show Cause. The Board advised Ramos that "[u]ntil Complainant files a complaint in federal court pursuant to 18 U.S.C. § 1514A(b)(1)(B) or the case is otherwise disposed of, this case remains pending and active before the Board, and Complainant is required to comply with the Board's orders." The Board ordered Ramos to show cause by August 25, 2022, why we should not dismiss his appeal for failing to file an opening brief. The Board instructed Ramos to file a copy of his opening brief along with his response. The Board warned Ramos that if it did not receive Ramos' response and opening brief, it may dismiss the appeal without further notice.

Ramos responded to the Order to Show Cause on August 25, 2022. In that response, Ramos reiterated his desire to withdraw his petition for review from the Board. He stated "I do believe I am entitled to remove this case by filing in federal court. I was indeed requesting withdrawal of the case when using the term 'permission to remove the claim to US Federal Court.'" However, Ramos also

indicated that he did not yet intend to file a complaint for de novo review in federal district court, based on the belief that he had four years from the date of his withdrawal to do so.

On September 9, 2022, the Board issued a Notice of Order Granting Complainant's Request to Withdraw Petition for Review (Notice). In the Notice, the Board explained that, as relevant to this case, a party like Ramos who has petitioned the Board for review of an ALJ's decision has two options for terminating his pending appeal prior to the Board's final adjudication. First, if 180 days have passed since the petitioner filed his initial OSHA complaint and the Secretary of Labor has not issued a "final decision" with respect to the petitioner's claim, and if there is no showing that the Secretary's delay in issuing a final decision is due to the petitioner's bad faith, then the petitioner may file a complaint for de novo review in an appropriate federal district court.² The Board reiterated to Ramos once again that if Ramos believes these conditions are satisfied in his case, he may file a complaint for de novo review without seeking or obtaining the Board's permission. Separately and alternatively, the Board explained that a petitioner may request to withdraw his petition for review with the Board.³ The Board noted, however, that if it grants a petitioner's request to withdraw, "the ALJ's decision will become the final order of the Secretary."⁴

In the Notice, the Board also cautioned Ramos that because withdrawal would render the ALJ's decision a "final order of the Secretary," and because de novo review in federal district court may only occur if the Secretary has not yet issued a "final decision," Ramos may be barred from seeking de novo review of his claim if he withdraws his Petition for Review before filing a complaint in district court.⁵ Accordingly, the Board declined to immediately grant Ramos' request to

² See 18 U.S.C. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114(a).

³ 29 C.F.R. § 1980.111(c).


⁴ *Id.*

⁵ See *Mullen v. Norfolk S. Ry. Co.*, No. 2:14-cv-00917, 2015 WL 3457493, at *7-11 (W.D. Pa. May 29, 2015) (finding complainant barred from seeking de novo review in federal district court under similar regulations under the Federal Railroad Safety Act, where ARB issued a final decision dismissing complainant's appeal after complainant expressed his intention to file in federal court, but before complainant filed his complaint). Although we noted this potential interpretation of the SOX statute and regulations in the Notice, we emphasized that the Board is not the tribunal responsible for deciding whether a federal district court would have jurisdiction over Ramos' complaint if he withdraws his


withdraw his Petition for Review. Instead, in light of the unique circumstances of the case, and balancing the interests of the parties with the Board's interest in achieving orderly and expeditious disposition of its cases, the Board gave notice to the parties that we intended to grant Ramos' request to withdraw his Petition for Review and order that his appeal is dismissed forty-five days after the issuance of the Notice.⁶ We also advised Ramos that if he filed a complaint for de novo review in district court before the Board granted his request to withdraw his Petition for Review, he must file a copy of the file-stamped complaint within seven days of filing.⁷

Forty-five days have passed since the Board issued the Notice, and Ramos has not filed a copy of a federal complaint with the Board or otherwise indicated to the Board that he has filed a claim in district court. Accordingly, pursuant to the Board's Notice, the Board hereby **GRANTS** Ramos's request to withdraw his petition for review, and **DISMISSES** this appeal.

SO ORDERED.



 SUSAN HARTHILL
 Chief Administrative Appeals Judge



 THOMAS H. BURRELL
 Administrative Appeals Judge

petition for review or if his case is otherwise dismissed before he actually files his complaint in district court. That decision must be made by the district court.

⁶ See *Jordan v. Sprint Nextel Corp.*, ARB Nos. 2010-0113, 2011-0020, ALJ Nos. 2006-SOX-00098, 2010-SOX-00050, slip op. at 5 (ARB June 29, 2012) (giving parties notice that complainant's appeal would be dismissed in thirty days pursuant to 29 C.F.R. § 1980.115, where complainant had indicated that he intended to pursue de novo review of some, but not all, of his claims against respondent).

⁷ 29 C.F.R. § 1980.114(c).