



**Issue Date: 21 September 2017**

Case No.: 2017-CFP-00002

In the Matter of:

JONATHAN BROFFORD,  
Complainant,

v.

PNC INVESTMENTS LLC,  
Respondent.

**DECISION AND ORDER DISMISSING COMPLAINT**

This matter arises under the employee protection provisions of the Consumer Financial Protection Act (“CFPA”), 12 U.S.C. § 5567. Complainant filed a Complaint with the Occupation Health and Safety Administration (“OSHA”) on October 5, 2016. Complainant argues that Respondent, PNC Investments, LLC (“Respondent”), terminated his employment after he threatened to disclose his manager’s unethical banking practices. OSHA dismissed the complaint as untimely. Complainant appealed to the Office of Administrative Law Judges for a hearing on November 18, 2016. He filed an amended complaint on May 8, 2011. Respondent, PNC Investments, LLC, filed a Motion to Dismiss based on untimeliness on June 28, 2017. A Show Cause Order was issued on August 22, 20017, ordering Complainant to respond by September 5, 2017, with evidence illustrating why his claim is not untimely and should not be dismissed. Complainant responded three days late on September 8, 2017. Respondent filed a Reply on September 12, 2017. For the reasons set forth below, Respondent’s motion is hereby granted. Complainant’s complaint is untimely.

Respondent terminated Complainant’s employment in November 2012. Complainant has not worked for Respondent since that time. Complainant filed his complaint with OSHA over 1,410 days later on October 5, 2016. Respondent filed a Motion to Dismiss, arguing that Complainant’s complaint should be dismissed as Complainant failed to file his claim within 180 days of his termination.

Respondent’s argument regarding timeliness is meritorious on its face. There are no triable issues of fact regarding the untimeliness of the filing. Therefore, Respondent is entitled to judgment as a matter of law and dismissal of the complaint unless the record demonstrates a triable issue of fact on whether the statute of limitations should be tolled.

Whistleblower statutes of limitations are subject to equitable modification, i.e., equitable tolling and equitable estoppel. However, in order to justify the tolling of an applicable statute of limitations, a complainant must act diligently, and it is his burden to show that the untimeliness of the filing is the result of circumstances beyond his control.<sup>1</sup>

Furthermore, I note that Complainant is *pro se*, and the ARB has stated that Administrative Law Judges must “construe complaints and papers filed by *pro se* complainants ‘liberally in deference of their lack of training in the law’ with a degree of adjudicative latitude.”<sup>2</sup> Complainant’s voluminous filings have been considered in their entirety and even construing the record “liberally in deference” to his unrepresented status, I still find them insufficient to avoid dismissal. Despite their regularity and magnitude, Complainant’s filings contain no credible factual allegation or legally sufficient argument supporting a finding that the long-expired statute of limitations should be tolled on equitable grounds. Stated differently, it is uncontroverted that Complainant’s claims were filed in excess of the applicable statute of limitations without legal or equitable justification.

Complainant provided no evidence that the untimely filing of his complaint occurred through circumstances beyond his control. Respondent terminated Complainant over four years prior to the filing of the complaint. The 180-day statute of limitations for the claim began to run on the date that Complainant was provided with final, definitive, and unequivocal notice of his termination. There is no evidence in the record to show that Respondents actively misled Complainant, that Complainant was prevented from asserting his rights in some extraordinary way, or that Complainant raised the claim in the wrong forum. The fact that Complainant disagrees with Respondent’s reasoning for his termination is not a sufficient basis to excuse his late filing. Complainant asserts that the complexity of the banking framework made it impossible for him to conclude that he was entitled to whistleblower protections and it was only when the news reported fraud in the industry that he learned that his termination could be protected. In his response to the Order to Show Cause, Complainant focuses on the underlying basis of his complaint and fail to assert evidence that tolling should apply. Complainant’s assertions do not excuse his late filing.

I find Respondent’s timeliness argument well-founded. Complainant failed to file his complaint within 180 days of his termination and has not established that equitable tolling should apply. I find there is no genuine issue of material fact relative to Complainant’s filing of his claim, that it is time barred, and that Respondent is entitled to judgement as a matter of law.

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<sup>1</sup> *Reid v. Boeing Corp.*, ARB No. 10-110, ALJ No. 2009-SOX-27, at 2 (ARB Mar. 30, 2013); *Jose Romero v. Coca Cola Co.*, ARB No. 10-095, ALJ No. 2010-SOX-21, at 2 (ARB Sept. 30, 2010).

<sup>2</sup> *Wyatt v. Hunt Transport*, ARB No. 11-039, ALJ No. 2010-STA-69, slip op. at 2 (ARB Sept. 21, 2012), quoting *Trachman v. Orkin Exterminating Co. Inc.*, ARB No. 01-067, ALJ No. 2000-TSC-3, slip op. at 6 (ARB Apr. 25, 2003).

**ORDER**

**IT IS HEREBY ORDERED** that Respondent's Motion to Dismiss is **GRANTED**.  
Complainant's complaint is **HEREBY DISMISSED**.

JOSEPH E. KANE  
Administrative Law Judge