

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 02 July 2007

Case No.: 2007-SOX-00022

In the Matter of

DEREK EVANS,
Complainant,

v.

LIBERTY MEDICAL SUPPLY, INC.,
Respondent.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

This matter arises from a complaint filed with the U.S. Department of Labor by Derek Evans on October 12, 2006 under the Corporate and Criminal Fraud Accountability Act (the Act), § 806 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A. The complainant requested the Office of Administrative Law Judges to review the finding by the Occupational Safety and Health Administration (OSHA) that there is not reasonable cause to believe the respondent violated his rights under the Act. The statute and implementing regulations provide that a complainant may file a complaint in the United States District Court if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint with OSHA and there is no showing that such delay is due to the bad faith of the complainant. *See* 18 U.S.C. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114.

This matter was assigned to me on February 1, 2007 for the purpose of scheduling a formal hearing. However, complainant's counsel, Kathleen M. Bonczyk, advised by letter dated March 7, 2007, that pursuant to 29 C.F.R. § 1980.114(b) that she was giving 15-day notice of her client's "intention to file a complaint at law or equity for *de novo* review in the appropriate District Court of the United States, which will have jurisdiction over this action."

I directed by Order dated March 23, 2007 that the complainant shall file a copy of the complaint filed with the appropriate U.S. District Court, which court will then have jurisdiction over this matter, and that I would then issue an Order of Dismissal. I subsequently received a copy of the complaint filed in the United States District Court for the Southern District of Florida by the complainant on June 26, 2007.

Inasmuch as the requirements of 29 C.F.R. § 1980.114 are met and the complainant has commenced an action in the federal court, the Secretary of Labor no longer has jurisdiction over this matter. Jurisdiction now resides with the U.S. District Court for the Southern District of Florida. Accordingly, IT IS HEREBY ORDERED that complainant's appeal to the Office of Administrative Law Judges is dismissed without prejudice.

A
DONALD W. MOSSER
Administrative Law Judge