



*Issue Date: 11 January 2012* In the Matter of:

**ESTATE OF KATHY J SYLVESTER**  
**Complainant**

v.

**2007 SOX 00039**

**PAREXEL INTERNATIONAL LLC.**  
**Respondent**

## **ORDER**

### ***GRANTING VOLUNTARY DISMISSAL***

This case arises under Section 806, the employee protection provision, of the Sarbanes-Oxley Act of 2002 (SOX) and its implementing regulations. 18 U.S.C.A. § 1514A; 29 C.F.R. Part 1980 (2009). Kathy J. Sylvester filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA), alleging that Parexel International LLC (Parexel) violated the SOX by discharging her in retaliation for engaging in SOX-protected activities. Parexel moved to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure (Fed. R. Civ. P.) 12(b)(1), and for failure to state a claim under Fed. R. Civ. P. 12(b)(6). On August 31, 2007, Judge Edward T Miller rendered a Recommended Decision and Order dismissing the Complainants' claim on the grounds that her OSHA complaint failed to establish subject matter jurisdiction under the SOX because those complaints failed to allege activity protected by SOX Section 806.

On May 25, 2011, the Administrative Review Board found that the Complainant established a prima facie claim and remanded the claim.<sup>1</sup> The claim was referred to me. Complainant Kathy Sylvester has passed away, and I entered an Order permitting substitution and scheduled the case for hearing, March 4 in Washington, D.C..

On January 10, 2012, Complainant's Estate, Timothy M. Sylvester, Personal Representative, by and through counsel, requests the withdrawal and dismissal with prejudice of the complaint.

Whereas I am asked to dismiss the complaint, a SOX claim is initiated upon the filing by one of the parties of objections to OSHA's findings and the party's request for a hearing. See 29 C.F.R. § 1980.106(a). This filing, according to the OALJ rules, constitutes the "complaint." See 29 C.F.R. § 18.2(d) ("'Complaint' means any document initiating an adjudicatory proceeding, whether designated a complaint, appeal or an order for proceeding or otherwise."). Where the Secretary's Findings are not final and a written withdrawal has been filed, approval of the

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<sup>1</sup> Whereas Judge Miller found the complaint failed to establish subject matter jurisdiction under the Act, the Board stated "It is therefore clear that [Complainant] far exceeded the pleading requirements established by the laws and regulations governing the SOX."

withdrawal is appropriate under 29 C.F.R. § 1980.111(c). Although the Complainant may indicate a desire to withdraw her claim, he is actually withdrawing a hearing request. *Weed v. Asset Acceptance Corp.*, 2005-SOX-63 (ALJ Aug. 5, 2005).

After review, it is determined that the Agreement is fair and reasonable on its face and constitutes a voluntary withdrawal of the request for hearing, which effectuates the purposes and policies of the Act.

ACCORDINGLY, it is hereby ORDERED that:

1. The “Stipulation of Dismissal with Prejudice” is **APPROVED**;
2. The request for hearing is **DISMISSED** with prejudice.
3. The hearing scheduled for March 4, 2012 in Washington, D.C. is **CANCELLED**.<sup>2</sup>

**SO ORDERED**

A

DANIEL F. SOLOMON  
Administrative Law Judge

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<sup>2</sup> The hearing in a companion case, *THERESA NEUSHAFER v. PAREXEL*, 2007-SOX-00042, is not cancelled.