

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 28 February 2008**

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CASE NO.: 2008 SOX 21

In the Matter of

**MARY J. GAREY**  
Complainant

v.

**BEST BUY, CO., INC.**  
**BRIAN J. DUNN, AND**  
**DARREN R. JACKSON**  
Respondents

Appearances: Mr. R. Scott Oswald, Attorney  
Mr. David Scher, Attorney  
For the Complainant

Mr. Steven R. Wall, Attorney  
Amy M. Fornan, Attorney  
For the Respondent

Before: Richard T. Stansell-Gamm  
Administrative Law Judge

**DISMISSAL ORDER**

On February 12, 2008, I was assigned to render a decision in this case under Section 806 of the Sarbanes-Oxley Act of 2002, (Public Law 107-204), 18 U.S.C. § 1514A, (“Act” and “SOX”) as implemented by 29 C.F.R. Part 1980 based on the Complainant’s February 8, 2008 objections to the findings of the Occupational Safety & Health Administration (“OSHA”) concerning her July 26, 2007 SOX complaint. During a subsequent telephone conference call with counsel, Mr. Scher advised that since the Complainant filed a complaint under the Act in U.S. District Court for the Southern District of Florida on January 29, 2008, Ms. Garey would withdraw her SOX complaint before the Office of Administrative Law Judges (“OALJ”). On February 26, 2008, I received the Complainant’s formal request to withdraw her SOX complaint.

Title 29 C.F.R. § 1980.111(c) permits withdrawal of objections to the determination of OSHA at any time prior to the time the determination becomes final. Additionally,

1514A(b)(1)(B) of the Act and 29 C.F.R. § 1980.114(a)<sup>1</sup> indicate that a complainant may bring an action in law or equity for *de novo* review in the appropriate federal district court if the Secretary of Labor does not render a final decision on her SOX complaint within 180 days of its submission. Once a complainant files a SOX claim with federal district court pursuant to Section 1514A(b)(1)(B), an administrative law judge no longer has jurisdiction over the matter. *See Stone v. Duke Energy Corp.*, 432 F.3d 320 (4th Cir. 2005) (case below 2003 SOX 12). Further, in *Mozingo v. The South Financial Group, Inc.*, ARB No. 07-040, ALJ No. 2007 SOX 2 (ARB Feb. 8, 2007), under similar circumstances, the Administrative Review Board (“ARB”) denied a complainant’s motion to dismiss his appeal without prejudice. In light of these provisions and the ARB’s decision, approval to the Complainant’s withdrawal request and dismissal of her SOX complaint with prejudice is warranted.

### ORDER

Accordingly, the withdrawal of the Complainant’s February 8, 2008 objections to the OSHA determinations regarding her July 26, 2007 SOX complaint is **APPROVED** and her case before the OALJ is **DISMISSED** with prejudice.

**SO ORDERED:**

**A**

RICHARD T. STANSELL-GAMM  
Administrative Law Judge

Date Signed: February 28, 2008  
Washington, D.C.

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<sup>1</sup>Although 29 C.F.R. § 1980.114(b) also requires the complainant to provide an administrative law judge, and various parties, fifteen days notice of her intention to file in federal district court, I note that Ms. Garey filed her federal action prior to appealing the adverse OSHA determination to the OALJ. Her counsel indicated the appeal was taken to the OALJ to preserve Ms. Garey’s administrative rights at that time. Additionally, during the telephone conference call, Respondent’s counsel did not enter an objection to the Complainant’s withdrawal request.