

U.S. Department of Labor

Office of Administrative Law Judges
St. Tammany Courthouse Annex
428 E. Boston Street, 1st Floor
Covington, LA 70433

(985)-809-5173
(985) 893-7351 (FAX)



Issue Date: 12 December 2008

CASE NO.: 2008-SOX-00031

IN THE MATTER OF

**JEFF HEMPHILL,
Complainant**

v.

**CELANESE CORPORATION,
Respondent**

ORDER DISMISSING CLAIM WITH PREJUDICE

On September 17, 2007, Complainant filed a complaint with the Department of Labor Occupational Safety and Health Administration (herein "OSHA") under the employee protective provisions of SOX, alleging that Respondent's termination of his employment violated the Whistleblower Protection provisions of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A. The Secretary of Labor through her agent, OSHA investigated the complaint and issued a report dismissing the complaint, finding no evidence of a SOX violation. Complainant filed a request for hearing with the undersigned on April 28, 2008, regarding the OSHA determination. Complainant filed a revised complaint on August 5, 2008.

On November 3, 2008, Respondent filed a Motion for Summary Decision. Shortly before a response to the motion was due, Complainant filed a Notice of Intent to File a Complaint in the United States District Court for the Northern District of Texas, under 29 C.F.R. § 1980.114. On November 23, 2008, both parties held a status conference with the undersigned, at which time both parties agreed that this present matter would take place in United States District Court, and that Complainant would not object to a Motion to Dismiss this instant claim. On December 2, 2008, Complainant filed a complaint in United States District Court. Respondent has now filed a Motion to Dismiss this claim with prejudice.

If the Board has not issued a final decision within 180 days of the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy. 29 C.F.R. § 1980.114(a). Once Complainant has elected to pursue his

SOX claim in United States District Court, the undersigned loses his jurisdiction over the instant claim. *See Mozingo v. The South Financial Group, Inc.*, ARB Case No. 07-040 (ARB February 8, 2007); *Mullins v FPL Energy, LLC*, 2007-SOX-00061 (DOL ALJ August 30, 2007); *Dauzat v. Crawford & Co.*, 2007-SOX-00057 (DOL ALJ August 12, 2008). Complainant has complied with the notice of intent requirements to filing his claim in United States District Court. Complainant further waited 180 days before filing his claim in District Court, and did not delay the undersigned's determination of the matter in bad faith. As Complainant has adequately filed in District Court, a dismissal of the claim with the undersigned is necessary, as the undersigned no longer has jurisdiction over the matter.

Considering the foregoing, I hereby dismiss this claim with prejudice based on Complainant's filing of the claim in United States District Court.

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**CLEMENT J. KENNINGTON
ADMINISTRATIVE LAW JUDGE**

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of the administrative law judge's decision. *See* 29 C.F.R. § 1980.110(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1980.110(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.109(c). Even if you do file a Petition, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days after the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).

