



Issue Date: 13 March 2008

Case No.: 2008-SOX-00019

In the Matter of:

WILLIAM MCKENNA,
Complainant,

v.

CDC SOFTWARE, INC.,
Respondent.

DECISION AND ORDER
DISMISSING THE COMPLAINT

This matter arises out of a complaint filed by William McKenna (“Complainant”) against CDC Software, Inc., (“Respondent”) under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C.A. § 1514A (“SOX” or the “Act”). A final determination letter was issued by OSHA on January 15, 2008. In the Secretary’s Findings, OSHA determined that the complaint was not filed within the statutory time frame. OSHA noted that the statute requires that a complaint be filed with the Secretary of Labor no later than 90 days after the date on which the person has been discharged or otherwise allegedly discriminated against. According to the evidence, the Complainant was fired on August 27, 2007, received formal notice of the firing on August 30, 2007, and filed his SOX complaint on November 30, 2007. The Complainant submitted his objections to the Secretary’s Findings on February 3, 2008. In his objections, the Complainant stated that he was unaware of the statutory timeframe and had been seeking legal representation. After a review of the record, I issued an Order To Show Cause on February 11, 2008, ordering the Complainant to address the timeliness issue. To date, the Complainant has not responded.

The regulations under 29 C.F.R. § 1980.103(d) require that a complaint be filed within 90 days of the alleged violation. The record indicates that the Complainant filed the present claim outside of the 90-day period. Since Mr. McKenna failed to file a viable complaint within the

mandated time frame, his complaint alleging a violation of the Sarbanes-Oxley Act's employee protection provision must be DISMISSED. SO ORDERED.

A

John M. Vittone
Chief 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).

