



**Issue Date: 30 November 2009**

**Case No.: 2009-SOX-52**

**In the Matter of**

**LISA GOODALE,  
Complainant,**

**v.**

**PEPSICO, INC,  
Respondent.**

## **ORDER OF DISMISSAL**

### **BACKGROUND**

This matter involves a complaint under the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (the Act)<sup>1</sup> and regulations promulgated pursuant thereto<sup>2</sup> brought by Complainant against Respondent. On 25 Sep 08, Complainant's counsel filed a complaint against Respondent with the Occupational Safety and Health Administration (OSHA). OSHA investigated the complaint and dismissed it on 28 May 09. On 11 Jun 09, Complainant's counsel filed objections and a request for a hearing. The case was referred to the Office of Administrative Law Judges and on 9 Jul 09, I conducted a conference call with both parties to schedule pretrial deadlines and a hearing date. Counsel agreed to discuss the case and submit a proposed scheduling order. I ordered them to do so by 3 Aug 09. No proposed order was submitted and on 25 Aug 09, when contacted by court administrators, Complainant's counsel stated he was no longer representing Complainant. On 27 Aug 09, Complainant informed the court administrators that she did not want to proceed *pro se* and requested thirty days to find a new attorney. Respondent did not object.

On 31 Aug 09, I issued an order encouraging Complainant to retain counsel and giving her until 25 Sep 09 to do so. I also ordered that if she was not able to retain counsel by that date, she and Respondent's Counsel would participate in a scheduling conference on 28 Sep 09. Complainant indicated at one point that she had found an attorney, but when the court contacted him, he denied that he had accepted the case. He

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<sup>1</sup> 18 U.S.C. § 1514A (2009).

<sup>2</sup> 29 C.F.R. Part 1980 (2009).

later confirmed by letter that he was not representing Complainant. When the court administrators called to initiate the conference on 28 Sep 09, she stated she had no interest in pursuing her complaint. On 30 Sep 09, Complainant again told administrative staff that she intended to withdraw the complaint and pursue in a different manner.

On 28 Oct 09, an order to show cause was issued and sent. The order gave Complainant 10 days after receipt to indicate in writing whether she wishes to continue to prosecute this litigation against Respondent and why the case should not be dismissed in accordance with her oral statements. The order was delivered to Claimant's mailing address as confirmed by telephone, but returned as unclaimed. To date, no notice of withdrawal or other response has been received by this court.

The rules of administrative practice provide that ALJ proceedings shall be conducted expeditiously and the parties shall make every effort at each stage of a proceeding to avoid delay.<sup>3</sup> In any proceeding subject to the Code of Federal Regulations, the administrative law judge shall have all powers necessary to conduct fair and impartial hearings, and may take measures necessary to enable him to discharge the duties of the office.<sup>4</sup>

A request for hearing may be dismissed upon its abandonment by the party who filed it.<sup>5</sup> In the instant case, Complainant has twice verbally confirmed to court administrators that she did not intend to pursue adjudication in this forum. She has then failed to respond to an Order to Show Cause why her case should not be dismissed in accordance with her oral statements.<sup>6</sup> It is abundantly clear that Complainant has no intention of prosecuting this claim and any further action in the case would serve only to waste everyone's time. Consequently, the only reasonable alternative is to dismiss.

This case is dismissed as abandoned.

**SO ORDERED** this 30<sup>th</sup> day of November 2009, at Covington, Louisiana.

A

**PATRICK M. ROSENOW**  
**Administrative Law Judge**

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<sup>3</sup> 29 C.F.R. § 18.1(a)(2009).

<sup>4</sup> 29 C.F.R. § 18.29(a)(9)(2009).

<sup>5</sup> 29 CFR § 18.39(b); *McCrum v. Westinghouse Radiological Svcs., Inc.*, 89-ERA-42 (Sec'y Apr. 9, 1992).

<sup>6</sup> *Spangenberg v. Briggs Associates, Inc.*, 92- TSC-1 (ALJ Oct. 10, 1992).

**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).