



Issue Date: 28 August 2009

Case No.: **2009-SOX-15**

In the Matter of:

JERRY N. LITWILLER,
Complainant

v.

DANA DRIVESHAFT MANUFACTURING,
Respondent

**DECISION AND ORDER APPROVING THE COMPLAINANT'S REQUEST
FOR WITHDRAWAL, DISMISSING THE CLAIM WITH PREJUDICE**

This proceeding arises from a claim of whistleblower protection under Section 806 of the Corporate and Criminal Fraud Accountability Act, Title VIII of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A. The statute and implementing regulations at 29 CFR Part 1980 (2008) prohibit retaliatory or discriminatory actions by publicly-traded companies against their employees who provide information to their employers, a federal agency, or Congress, alleging violation of any Federal law relating to fraud against shareholders. Mr. Litwiller requested review of the Secretary's Findings issued by the Occupational Safety and Health Administration ("OSHA") that stated there was no reasonable cause to believe that Dana Driveshaft Manufacturing violated the Sarbanes-Oxley Act when it terminated his employment. Two telephone conferences have been held to set the schedule for proceedings and address discovery disputes.

Mr. Litwiller has requested to withdraw his claim with prejudice. Dana Driveshaft Manufacturing has no objection. Under 29 C.F.R. § 1980.111(c), a party may withdraw his objections to the findings by OSHA at any time before the findings become final. When a complainant seeks to withdraw his or her complaint, the request should be construed as a withdrawal of objections to the Secretary's findings. *See Mysinger v. Rent-A-Driver*, 1990-STA-23 (Sec'y Sept. 21, 1990) (decided under a similar regulation found at 29 C.F.R. §1978.111(c)). Being duly advised, I find that Mr. Litwiller's request should be granted.

IT IS THEREFORE ORDERED:

1. The Complainant's request to withdraw his claim is **GRANTED**.
2. The Secretary's Findings issued by OSHA on November 25, 2008, are **REINSTATED**.
3. This claim is **DISMISSED** with prejudice, with each party to bear its own attorney fees and costs.

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Alice M. Craft
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).