

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 05 March 2009

CASE NO.: 2009-SOX-00028

In the Matter of

MICHAEL MCCORMICK,
Complainant

v.

LIMITED BRANDS, INC., /
HNERI BENDEL, INC.
Respondents

ORDER DISMISSING COMPLAINT

This matter arises from the complaint of Michael McCormick (the Complainant), filed against Limited Brands, Inc. and Henri Bendel, Inc. (Respondents) on April 25, 2008, under the employee protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act, Title VII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. §1514A (“SOX”). The complainant alleges that he was fired for reporting credit card fraud and inflated profits. The Secretary of Labor, acting through her agent, the Regional Administrator for the Occupational Safety and Health Administration (“OSHA”), found that there is no reasonable cause to believe that Respondent violated SOX. On February 9, 2009, the Complainant filed objections to the Secretary’s preliminary order dismissing the complaint and requested a hearing pursuant to 29 C.F.R. §1980.106 (2008). The matter was assigned to Administrative Law Judge Daniel F. Sutton, and a hearing was scheduled to convene on April 28, 2009.

On February 27, 2009, the Complainant filed a Notice of Intent to File a Complaint in the U.S. District Court to the Office of Administrative Law Judges. 29 C.F.R. § 1980.114(b). Under this provision, a complainant may remove his case to a federal district court if a final decision has not been issued “within 180 days of the filing of the complaint”. *Id.* Additionally, notice of intent to file a complaint in district court must be given to the Administrative Law Judge or Administrative Review Board fifteen days prior to the actual filing in district court. *Levi v Anheuser-Busch Co., Inc.*, USDOL/OALJ Reporter ARB Nos. 06-102, 07-020, 08-006, ALJ Nos., 2006-SOX-37 and 108, 2007-SOX-55, at n. 3 (ARB Oct. 27, 2008). In this matter, 180 days have already passed since the Complainant originally filed his complaint in which no final decision has been rendered. Additionally, the Complainant provided notice of his intention to file in district court within the fifteen day window. As a result, the administrative law judge “no

longer [has] jurisdiction to enter any order in the case other than one dismissing it on the ground that [the Complainant] had removed the case to district court.” *Powers v. Pinnacle Airlines, Inc.*, USDOL/OALJ Reporter ARB No. 05-138, ALJ No. 2005-SOX-00065 at 5 (ARB Oct. 31, 2005). *See also Stone v. Duke Energy Corp.*, 432 F.3d 320, 322-323 (4th Cir. 2005).

Accordingly, the complaint filed by Michael McCormick with the Department of Labor on April 25, 2008 is **DISMISSED** as the Complainant has removed the case to district court pursuant to 18 U.S.C. §1514A(1).

SO ORDERED.

A

DANIEL F. SUTTON
Administrative Law Judge

Boston, Massachusetts