

U.S. Department of Labor

Office of Administrative Law Judges
O'Neill Federal Building - Room 411
10 Causeway Street
Boston, MA 02222

(617) 223-9355
(617) 223-4254 (FAX)



Issue Date: 20 May 2009

CASE NO.: 2009-SOX-00036

In the Matter Of:

MICHAEL MIGLIORATO

Complainant

v.

AMERICAN INTERNATIONAL GROUP, INC.

Respondent

FINAL ORDER APPROVING VOLUNTARY DISMISSAL

This proceeding arises from a complaint of discrimination filed Complainant Michael Migliorato (“Migliorato”) against Respondent American International Group, Inc. (“AIG”) 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 (West 2008) and the procedural regulations found at 29 C.F.R. Part 1980 (2008). The case is currently before the administrative law judge (“ALJ”) for a formal hearing on Migliorato’s objections to a January 7, 2009 order issued by the Regional Administrator for the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), acting as agent for the Secretary of Labor (“Secretary”), dismissing Migliorato’s complaint.

On May 5, 2009, Migliorato filed a motion for voluntary dismissal of his request for hearing without prejudice pursuant to Federal Rule of Civil Procedure 41(a). Fed. R. Civ. P. 41(a). The Secretary of Labor’s regulations implementing Section 806 provide three options for terminating a case pending before an ALJ prior to final adjudication: (1) a party may withdraw his or her objections to the findings or order on appeal by filing a written withdrawal with the ALJ in which case the findings or order becomes the final order of the Secretary.; (2) the parties may enter into an adjudicatory settlement which must be filed with the ALJ for review; or (3) if the Department of Labor’s Administrative Review Board has not issued a final decision within 180 days of the filing of the complaint, the complainant may bring an action at law or equity for *de novo* review in the appropriate United States district court. 29 C.F.R. §§ 1980.111(c), 1980.111(d)(2), 1980.114 (2008). Since Migliorato’s motion did not reveal why he requested voluntary dismissal of his request for hearing, the ALJ issued an order on May 6, 2009 directing him to identify under which of these three options he wishes to proceed in accordance with *Vodicka v. DOBI Medical International, Inc.*, USDOL/OALJ Reporter (PDF) ARB No. 06-036, ALJ No. 2005-SOX-111, slip op. at 2 (DOL Adm.Rev.Bd. May 30, 2007). On May 18, 2009, Migliorato filed a “Complainant’s Notice of Dismissal [Fed. R. Civ. P. 41(a)]” in which he states that he is withdrawing his objections to the January 7, 2009 preliminary findings and order

“[b]ased on my time constraint in responding to Respondent’s frivolous interrogatories and discoveries; length of time since the case was originally filed with the Department of Labor and complexity of determining damages from Respondent in their current financial condition according to the law.” Complainant’s May 14, 2009 Mot. at 1.¹

Based on the foregoing, the Complainant’s request to withdraw his objections to the Secretary’s January 7, 2009 preliminary findings and order is hereby **APPROVED**, and the Complainant’s request for hearing is hereby **DISMISSED**. Accordingly, the Secretary’s January 7, 2009 order dismissing the complaint becomes the Department of Labor’s final order in this matter. 29 C.F.R. § 1980.111(c) (2008).

SO ORDERED.

A

DANIEL F. SUTTON
Administrative Law Judge

Boston, Massachusetts

¹ On April 10, 2009, the ALJ approved the parties’ joint scheduling order on April 10, 2009 which set time frames for discovery, pre-trial disclosures and motions for summary disposition. The April 10, 2009 order also scheduled the hearing at the parties’ joint request to convene on September 9, 2009. The Complainant has not sought to modify any of the time limits to which he agreed in the joint scheduling order, and he has not filed any motion for a protective order with respect to the Respondent’s discovery.