



Issue Date: 06 October 2010

Case No.: **2009-SOX-00017**

In the Matter of

JULIO PEREZ,
Complainant,

v.

PROGENICS PHARMACEUTICALS, INC.,
Respondent.

ORDER DISMISSING COMPLAINT

This matter arises from the complaint of Julio Perez (the Complainant), filed against Progenics Pharmaceuticals, Inc. (the Respondent) on October 2, 2007, under the Accountability Act, Title VII of the Sarbanes-Oxley Act of 2002, 18 U. S. C. §1514A (“sox”). On December 5, 2008, 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 December 23, 2008, 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 A. Sarno, Jr.

On October 4, 2010, 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 a 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.*, F. 3d 320, 322-323 (4th Cir. 2005).

Accordingly, the complaint filed by Julio Perez with the Department of Labor on October 2, 2007 is **DISMISSED** as the Complainant has removed the case to district court pursuant to 18 U.S.C. §1514A(1).

SO ORDERED.

A

DANIEL A. SARNO, JR.
Administrative Law Judge

DAS/ccb
Newport News, Virginia

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).