



**In the Matter of:**

**BRIAN VODICKA,**

**ARB CASE NO. 06-037**

**COMPLAINANT,**

**ALJ CASE NO. 2006-SOX-0111**

**v.**

**DATE: May 30, 2007**

**DOBI MEDICAL INTERNATIONAL,  
INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearance:**

***For the Complainant:***

**Robert M. O'Boyle, *Strasburger & Price, LLP*, Austin, Texas**

**FINAL ORDER APPROVING DISMISSAL**

This case arose when the Complainant, Brian Vodicka, filed a complaint under the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX or the Act).<sup>1</sup> On December 23, 2005, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order Dismissing the Complaint (R. D. & O.), granting the motion for summary judgment the Respondent, Dobi Medical International, Inc., filed.

The Secretary of Labor has delegated her authority to issue final administrative

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<sup>1</sup> 18 U.S.C.A. § 1514A (West Supp. 2005). The regulations implementing SOX are found at 29 C.F.R. Part 1980 (2006).

decisions in cases arising under SOX to the Administrative Review Board.<sup>2</sup> Vodicka filed a timely petition requesting the Board to review the R. D. & O.<sup>3</sup> In response, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule. On April 18, 2006, the Board received a letter from Vodicka requesting the Board to dismiss his SOX whistleblower claim with prejudice.

The SOX implementing regulations provide three options for terminating a case pending at the Board prior to final adjudication.<sup>4</sup> First, a party may withdraw his or her objections to the findings or order on appeal by filing a written withdrawal with the Board. In that case the findings or order becomes the final order of the Secretary.<sup>5</sup> Second, the parties may enter into an adjudicatory settlement.<sup>6</sup> If the parties enter into a settlement, the regulations require the parties to file a copy of the settlement with the Board for its review.<sup>7</sup> Third, if the 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.<sup>8</sup>

On May 9, 2007, the ARB issued an Order requiring Vodicka to state under which of the three options, he wished to proceed. Vodicka, through counsel, averred that he wished “to withdraw his objections to the Findings and Order of the Department of Labor Administrative Law Judge pursuant to 29 C.F.R. § 1980.111(c).”

We **APPROVE** Vodicka’s request for withdrawal of his objections to the Administrative Law Judge’s Recommended Decision and Order Dismissing the

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<sup>2</sup> Secretary’s Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. §§ 1980.110.

<sup>3</sup> 29 C.F.R. § 1980.110(a).

<sup>4</sup> 29 C.F.R. § 1980.111(c), (d)(2); 29 C.F.R. § 1980.114.

<sup>5</sup> 29 C.F.R. § 1980.111(c).

<sup>6</sup> 29 C.F.R. § 1980.111(d)(2).

<sup>7</sup> See e.g., *Macktal v. Sec’y of Labor*, 923 F.2d 1150, 1154 (5th Cir. 1991); *Barker v. Perma-Fix of Dayton*, ARB No. 06-045, ALJ No. 2006-SOX-1 (ARB July 10, 2006)(SOX settlements must be filed with the ARB).

<sup>8</sup> 29 C.F.R. § 1980.114.

Complaint and **DISMISS** his appeal. Accordingly, the Recommended Decision and Order Dismissing the Complaint becomes the Department of Labor's final order in this case.

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**