



**In the Matter of:**

**L. THOMAS RICHARDS,**

**ARB CASE NO. 06-128**

**COMPLAINANT,**

**ALJ CASE NO. 2004-SOX-00049**

**v.**

**DATE: August 25, 2006**

**LEXMARK INTERNATIONAL, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Petitioner:*

**Larry A. Sykes, Esq., Lizbeth Ann Tully, Esq., Stoll Keenon Ogden PLLC,  
Lexington, Kentucky**

**FINAL ORDER APPROVING WITHDRAWAL OF RESPONDENT'S  
PETITION FOR REVIEW AND DISMISSING APPEAL**

This case arose under the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (SOX),<sup>1</sup> and its implementing regulations<sup>2</sup> when the Complainant, L. Thomas Richards, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA)<sup>3</sup> alleging that the Respondent terminated his employment in violation of Section 806, SOX's employee protection provision. OSHA denied the complaint. Richards

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<sup>1</sup> 18 U.S.C.A. § 1514A (West Supp. 2003).

<sup>2</sup> 29 C.F.R. Part 1980 (2005).

<sup>3</sup> See 29 C.F.R. § 1980.104.

objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).<sup>4</sup>

On June 20, 2006, the ALJ issued a Recommended Decision and Order Dismissing Claim (R. D. & O.). The ALJ found that

Complainant's complaint was timely filed but the claim must be dismissed because Complainant has failed to establish the requisite elements for a cause of action under the Act by a preponderance of the evidence. Specifically, he has failed to establish that he engaged in protected activity within the meaning of the Act or that there was a causal relationship between his alleged protected activity and his termination.<sup>5</sup>

On July 5, 2006, Lexmark filed a protective petition for review of the R. D. & O. with the Administrative Review Board.<sup>6</sup> Lexmark stated that it took exception to several of the ALJ's findings but that it filed the petition for "the purpose of preserving Lexmark's exceptions in the event that the Complainant seeks and is granted review of the June 20, 2006 Recommended Decision and Order Dismissing Claim."<sup>7</sup> Richards did not file a petition asking the Board to review the ALJ's R. D. & O.

On August 2, 2006, Lexmark filed a Withdrawal of Respondent's Petition for Review. In support of the withdrawal Lexmark stated,

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<sup>4</sup> See 29 C.F.R. § 1980.106.

<sup>5</sup> R. D. & O. at 40.

<sup>6</sup> The Secretary of Labor has delegated her authority to issue final administrative decisions in cases arising under SOX to the Administrative Review Board. Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002). See also 29 C.F.R. § 1980.110. The SOX's regulations provide:

The decision of the administrative law judge will become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties.

29 C.F.R. § 1980.110(a).

<sup>7</sup> Petition of Lexmark International, Inc. for Review at 2.

Respondent filed a Petition for Review strictly for the purpose of preserving Lexmark's exceptions in the event that the Complainant sought review of the Administrative Law Judge's Recommended Decision and Order Dismissing the Claim. Since Complainant did not file a Petition for Review, Respondent's Petition for Review is now moot and Respondent requests that its Petition be withdrawn.<sup>8</sup>

Accordingly, we **GRANT** Lexmark's request to withdraw its Petition for Review, and we **DISMISS** its appeal.

**SO ORDERED.**

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

**A. LOUISE OLIVER**  
**Administrative Appeals Judge**

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<sup>8</sup> Withdrawal of Respondent's Petition for Review at 1.