



In the Matter of:

MICHAEL RZEPIENNIK,
COMPLAINANT,

ARB CASE NO. 07-059

ALJ CASE NO. 2004-SOX-26

v.

DATE: April 30, 2007

ARCHSTONE SMITH, INC.,
RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER DISMISSING COMPLAINT

On February 23, 2007, a Department of Labor Administrative Law Judge issued a Recommended Decision and Order Dismissing Complainant's claim in this case arising under the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX)¹ and its implementing regulations.² The Secretary of Labor has delegated to the Administrative Review Board (Board) her authority to issue final agency decisions under SOX.³

Michael Rzepiennik, the Complainant, filed a Petition for Review with the Board on March 9, 2007. On March 26, 2007, the Board issued a Notice of Appeal and Briefing Schedule.

Pursuant to 29 C.F.R. § 1980.114 if the Board has not issued a final decision within 180 days of the date on which the complainant filed the complaint and there is no showing that the complainant has acted in bad faith to delay the proceedings, the complainant may bring an action at law or equity for de novo review in the appropriate United States District Court, which will

¹ 18 U.S.C.A. § 1514A (West 2007).

² 29 C.F.R. Part 1980 (2006).

³ Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1980.110(a) (2007).

have jurisdiction over the action without regard to the amount in controversy.⁴ On March 30, 2007, fifteen (15) days in advance of filing, the Board received the Complainant's Notice of Intent to File Lawsuit in United States District Court.

On April 5, 2007, the Board issued a Show Cause Order permitting Archstone Smith, Inc., the Respondents, to reply to the Complainant's Motion to Dismiss. Archstone Smith, Inc. did not reply to the Board's Order.

Accordingly, because Rzepiennik has opted to pursue his SOX complaint in district court rather than with the Board, we **GRANT** the Complainant's Motion to Dismiss his SOX complaint.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

DAVID G. DYE
Administrative Appeals Judge

⁴ 18 U.S.C.A. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114(a). The Board received Rzepiennik's Petition for Review more than three years after he filed his initial complaint with the Occupational Safety & Health Administration. Thus, as is usually the case with SOX appeals, the 180-day period had expired long before the Complainant filed his Petition for Review with the Board.