



In the Matter of:

ARNOLD SIEGEL,

ARB CASE NO. 08-118

COMPLAINANT,

ALJ CASE NO. 2006-S0X-030

v.

DATE: November 20, 2009

ABM JANITORIAL SERVICES, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

N. Douglas Grimwood, Esq., *Grimwood Law Firm*, Phoenix, Arizona

For the Respondent:

J. Greg Coulter, Esq., *Little Mendelson PC*, Phoenix, Arizona

FINAL DECISION AND ORDER DISMISSING COMPLAINT

The Complainant, Arnold Siegel, filed a complaint alleging that the Respondent, ABM Janitorial Services, Inc. (ABM), terminated his employment in violation of the whistleblower protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VII of the Sarbanes-Oxley Act (SOX),¹ and its implementing regulations.² Prior to

¹ 18 U.S.C.A. § 1514(A)(West Supp. 2008). SOX's section 806 prohibits certain covered employers from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against employees who provide information to a covered employer or a Federal

his termination, Siegel worked for ABM Janitorial Services for approximately twenty two years. In December of 2006, Siegel claims he informed the legal department that managers were violating ABM's Code of Business Conduct and Ethics.³ ABM fired Siegel on June 29, 2007.

On July 2, 2007, Siegel contacted the Equal Employment Opportunity Commission (EEOC) about filing an age discrimination complaint and whistleblower complaint.⁴ At that time, the EEOC advised Siegel that it had no jurisdiction over the whistleblower claim and referred him to the Arizona Attorney General's Office. Siegel asked how long he had to file his EEO complaint and was informed that he had 300 days.⁵

Siegel contacted the Arizona AG's office in October 2007 and was eventually referred to the Occupational Safety and Health Administration (OSHA).⁶ On October 19, 2007, Siegel spoke with an OSHA representative who informed him that the filing deadline for a SOX complaint is 90 days and that this deadline had already passed. The OSHA representative further informed Siegel that, in some cases, the 90-day filing requirement can be tolled.

Thereafter, Siegel filed a SOX complaint with OSHA on January 23, 2008. OSHA dismissed Siegel's complaint, finding it he had filed it more than 90 days after his June 29, 2007 termination.⁷ Siegel appealed OSHA's findings to the Office of Administrative Law Judges.

The ALJ assigned to the case issued a sua sponte order requesting the parties to show cause why Siegel's SOX complaint should not be dismissed because he did not file it within 90 days as the statute requires. Siegel responded, arguing that the statutory filing time should be

agency or Congress regarding conduct that the employee reasonably believes constitutes a violation of 18 U.S.C.A. §§ 1341 (mail fraud), 1343 (wire, radio, TV fraud), 1344 (bank fraud), or 1348 (securities fraud), or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. Employees are also protected against discrimination when they have filed, testified in, participated in, or otherwise assisted in a proceeding filed or about to be filed relating to a violation of the aforesaid fraud statutes, SEC rules, or federal law.

² 29 C.F.R. Part 1980 (2009).

³ Siegel Resp. to Show Cause at 1.

⁴ Siegel Compl. at 1.

⁵ Siegel Resp. to Show Cause at 4.

⁶ Siegel Compl. at 1.

⁷ OSHA Findings and Order at 1.

tolled where the representative at the EEOC failed to inform him of other statutory deadlines for his whistleblower claim. Siegel claims he asked how long he had to file the EEOC claim and was told 300 days.⁸ In his complaint, Siegel claims he did not realize that his whistleblower claim might be under a time constraint different than the EEOC's 300-day filing deadline.⁹ Siegel further argued he did not sleep on his rights and that he followed the instructions of each of the governmental agencies contacted.¹⁰ ABM filed a response arguing that Siegel's claim should be dismissed because he failed to file it within SOX's 90-day deadline.

A Department of Labor Administrative Law Judge (ALJ) issued a [Recommended] Decision and Order (R. D. & O.) finding that Siegel failed to carry his burden of establishing that he was entitled to tolling of the 90-day limitations period for filing a complaint alleging a violation of the SOX whistleblower protection provisions. Siegel filed a timely petition requesting the Administrative Review Board (ARB) to review the R. D. & O.¹¹

The Secretary of Labor has delegated her authority to issue final agency decisions under the SOX to the ARB.¹² The Board issued a Notice of Review and Briefing Schedule permitting the parties to submit briefs in support of or in opposition to the ALJ's order. Both parties submitted briefs. Nevertheless, while the case was pending before the Board, on February 13, 2009, both parties stipulated to dismiss the case with prejudice.

Pursuant to the regulations implementing SOX, a party may withdraw his objections to OSHA's findings or order by filing a written withdrawal with the administrative law judge or if the case is on review, with the ARB. The SOX's implementing regulations provide in relevant part:

At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether to approve the withdrawal.^[13]

⁸ Siegel Resp. to Show Cause at 4.

⁹ Siegel Compl. at 1.

¹⁰ Siegel Resp. to Show Cause at 6.

¹¹ See 29 C.F.R. § 1980.110(a).

¹² See Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002). See also 29 C.F.R. § 1980.110.

¹³ 29 C.F.R. § 1980.111(c).

As both parties are in agreement, we **APPROVE** the joint stipulation and **DISMISS** the complaint with prejudice.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge