



In the Matter of:

ROBERT W. REAMER,

ARB CASE NO. 09-053

COMPLAINANT,

ALJ CASE NO. 2009-SOX-003

v.

DATE: July 21, 2011

**FORD MOTOR COMPANY,
FORD MOTOR CREDIT COMPANY, ET. AL.,**

RESPONDENTS.

Appearances:

For the Complainant:

Robert Reamer, *pro se*, Dearborn, Michigan

For the Respondents:

**Maurice G. Jenkins, Esq.; Emily M. Petroski, Esq.; *Jackson Lewis LLP*, Southfield,
Michigan**

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; and Luis A. Corchado, *Administrative Appeals Judge*

FINAL DECISION AND ORDER

This case arises under the employee protection provision of the Sarbanes-Oxley Act of 2002 (Section 1514A or SOX) and its implementing regulations.¹ Robert Reamer filed a

¹ 18 U.S.C.A. § 1514A (West Supp. 2011); 29 C.F.R. Part 1980 (2010). In 2010, Congress amended Section 1514A. See the Dodd-Frank Wall Street Reform and Consumer Protection Act,

complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Ford Motor Credit Company (Ford Credit), a wholly owned subsidiary of Ford Motor Company, violated the SOX by terminating his employment in retaliation for engaging in protected activity. On January 13, 2009, a Labor Department Administrative Law Judge (ALJ) granted summary decision to Ford Credit finding that (1) Reamer failed to identify a genuine issue of material fact that he engaged in protected activity under the Act, and (2) the undisputed facts establish that he did not engage in protected activity, an essential element of his claim. We affirm.

BACKGROUND²

Reamer, a Certified Public Accountant, supervised the Dealer Field Credit Department in the Global Risk Management division of Ford Credit from 1994 until Ford Credit terminated his employment in 2008. Summary Decision, Order Dismissing Complaint and Order Cancelling Hearing (D. & O.) at 1. In April 2005, Reamer and his staff investigated a dealership that had defaulted on a loan. Reamer Resp. Mot. for S.J., Ex. 6 (May 7, 2006 letter to FBI). Concerned about an unusual transaction, Reamer commented to the office manager of the dealership that the transaction was illegal and that one could go to jail for it. Ford Br. Ex. F (summary of Reamer's allegations). Reamer later apologized for making the comment and disclaimed any accusation or knowledge of fraud at the dealership. *Id.*; Reamer Resp. Mot. for S.J., Ex. 9 (May 14 e-mail to Ford Personnel Relations).

In February of 2006, after the dealership had filed for bankruptcy, the FBI investigated the dealership as part of an investigation Ford initiated. Ford Br. Ex. F. at 2; OSHA Order at 2 (Sept. 25, 2008). During its inquiry, the FBI interviewed Reamer. Reamer Resp. Mot. for S.J., Ex. 6.

From March through July 2006, several communications occurred between Reamer, Ford Credit, and the FBI. On March 12, Reamer wrote to the FBI national office about the Detroit FBI office's investigation. Reamer Resp. Mot. for S.J., Ex. 1 (Mar. 12 letter to FBI). Reamer expressed his concern that the FBI's investigation was being conducted to serve ulterior motives. Reamer reported that he had no knowledge of any crime but felt suspicious of the local investigation and wanted to report his concern for possible FBI internal investigation. Reamer Resp. Mot. for S.J., Ex. 1, Ex. 6. Concerned about the use of government resources in what Reamer characterized as a baseless, political FBI investigation, Reamer claimed that there was a "possibility that [Ford Credit may be engaging in] illegal acts" and a breakdown in "internal controls." Reamer Resp. Mot. for S.J., Ex. 4 (May 1 e-mail to manager), Ex. 5 (May 3 letter to Ford), Ex. 6, Ex. 9. Reamer reiterated that he was making no allegation of fraud and had no

Pub. L. No. 111-203, 124 Stat. 1376 (2010) (Dodd-Frank Act). The amendments do not affect our decision.

² The background is based on undisputed facts or facts viewed in the light most favorable to Reamer.

evidence of fraud. Reamer Resp. Mot. for S.J., Ex. 4, Ex. 6. Reamer also informed Ford of a threatening phone call that he believed someone at Ford may have initiated. Reamer Resp. Mot. for S.J., Ex. 4.

In July 2006, Reamer was asked to participate in a New Jersey State Police investigation of a second dealership. Reamer Resp. Mot. for S.J., Ex. 11, Ex. 12. Reamer conveyed his belief that that he had no proof or documentation of fraud concerning the second dealership. Reamer Resp. Mot. for S.J., aff. at 3-4. Reamer speculated that he was being coerced into reporting fraud to benefit Ford or one of Ford's customers. Reamer Resp. Mot. for S.J., aff. 2; Mar. 28 Compl. at 3.

More than a year later, on January 7, 2008, a subordinate working for Reamer complained about Reamer's sexually inappropriate comments. Following an investigation, Ford Credit terminated Reamer's employment on January 18, 2008, for violating Ford Credit's anti-harassment policy. Reamer filed a complaint claiming he was fired for engaging in SOX-protected activity in 2006. Mar. 28 Compl. 1-2. OSHA determined that protected activity was not a contributing factor to his termination. OSHA Order at 2.

Reamer filed objections to OSHA's determination, and the case was assigned to an ALJ. Ford Credit filed a motion to dismiss or alternatively a motion for summary decision arguing that (1) Reamer did not engage in protected activity, (2) there was no causal connection between his termination and alleged protected activity, and (3) Ford Credit was not covered under the Act. On January 13, 2009, the ALJ held that Reamer failed to generate a genuine issue of material fact that he engaged in protected activity. D. & O. at 5-8. On the issue of coverage, the ALJ found that the evidence, for purposes of summary decision and in the light most favorable to Reamer, established that Ford Credit was Reamer's employer and was subject to the Act. D. & O. at 8. Reamer appealed the ALJ's D. & O. to the Administrative Review Board (ARB or Board).

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the SOX. Secretary's Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010). The Board reviews an ALJ's grant of summary judgment de novo. *Levi v. Anheuser Busch Cos., Inc.*, ARB Nos. 06-102, 07-020, 08-006, ALJ Nos. 2006-SOX-037, -108; 2007-SOX-055, slip op. at 6 (ARB Apr. 30, 2008). The standard for granting summary decision is essentially the same as the one used in Fed. R. Civ. P. 56, the rule governing summary judgment in the federal courts. *Moldauer v. Canandaigua Wine Co.*, ARB No. 04-022, ALJ No. 2003-SOX-026, slip op. at 3 (ARB Dec. 30, 2005). Thus, pursuant to 29 C.F.R. § 18.40(d) (2010), the ALJ may issue summary decision "if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision."

DISCUSSION

Before the ALJ, Ford Credit filed a motion for summary judgment on the grounds of lack of coverage, lack of protected activity, and lack of causation between the alleged protected activity and Reamer's termination. Ford Credit Mot. for S.J. The ALJ granted Ford Credit's motion, and for the following reasons, we affirm.

1. Protected activity

The ALJ found no genuine issue of material fact for hearing concerning Reamer's claim to have engaged in SOX-protected activity. D. & O. at 7-8. Specifically, the ALJ found there was

no manifestation of specific conduct that had occurred or was in the process of occurring that constituted a fraudulent activity encompassed by the Act. The Complainant's communications were, at best, general inquiries about the conduct of an investigation into one of [Ford Credit's] vendors, or complaints about the manner in which his conduct was investigated and not specific complaints of fraudulent conduct covered by the Act. No reasonable person could believe otherwise.^[3]

On appeal Reamer, pro se, claims that the ALJ erred by failing to place the burden on Ford Credit to establish that there was no genuine issue of material fact for hearing. Pet. for Rev. at 2; Br. at 11. Reamer further argues that the ALJ erred in finding his complaints "general inquiries" where he specifically stated that the company violated federal law by initiating the FBI investigation. Br. at 17. Reamer claims his reports complained of a "material breakdown in internal controls" and thus constitute protected activity under the Act. Pet. for Rev. at 5, 7. Reamer also faults the ALJ for failing to consider Section 1107 of the Sarbanes-Oxley Act. Br. at 12, 15, 16-17.

Ford Credit responds that Ford Credit is not covered under Section 806; that Reamer did not engage in protected activity under the Act; that Section 1107 does not create a private cause

³ D. & O. at 7. As part of the ALJ's discussion on protected activity, the ALJ stated "an employee must show that his communications to his employer 'definitively and specifically relat[e]' to one of the laws listed." D. & O. at 4. We note that the Board has criticized the use of "definitively and specifically" as a standard for an employee's reasonable belief of a violation of the laws listed under Section 806. *Sylvester v. Parexel Int'l LLC*, ARB No. 07-123, ALJ No. 2007-SOX-039, -042, slip op. at 17 (ARB May 25, 2011). Our decision focuses on the reasonableness of Reamer's belief of a violation, not on the specificity of his complaints. Therefore, the ALJ's reference to the "definitively and specifically" standard is inconsequential to our decision.

of action; and that the ARB has no jurisdiction over criminal violations under Section 1107. Ford Opp. to Pet. for Rev. at 10-23.

The SOX whistleblower provisions (§ 1514A) are contained in Title VIII of the SOX, designated as the Corporate and Criminal Fraud Accountability Act of 2002. Section 1514A prohibits covered employers and individuals from retaliating against employees for providing information or assisting in investigations related to certain fraudulent acts. That provision states that no covered employer

may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341 [mail fraud], 1343 [wire, radio, TV fraud], 1344 [bank fraud], or 1348 [securities fraud], any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders

18 U.S.C.A. § 1514A.

To prevail on a § 1514A claim, a complainant must prove by a preponderance of the evidence that: (1) he engaged in activity or conduct that § 1514A protects; (2) the respondent took unfavorable personnel action against him; and (3) the protected activity was a contributing factor in the adverse personnel action. However, relief may not be granted if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected behavior. 29 C.F.R. § 1980.109(a).

We agree with the ALJ that Reamer has failed to generate a genuine issue of material fact that he engaged in protected activity under SOX Section 806. From March through July 2006, Reamer made several communications to supervisors at Ford and to the FBI. These communications can be summarized to show that Reamer: (1) felt he was coerced to report fraud, (2) complained of receiving a threatening phone call, (3) complained of waste of government resources concerning the FBI investigation, (4) requested Ford investigate “possible illegal acts” and loss of “internal controls,” (5) requested the FBI internally investigate the investigation as a political maneuver, and (6) made various complaints about the individuals and motives of those conducting the investigation.

Throughout his 2006 communications, Reamer clearly stated that he had no evidence of fraud. In fact, that Reamer did not make a complaint about fraud and the FBI’s apparent disregard of that fact, were parts of his overall grievance. Reamer felt the investigation served ulterior motives and was a waste of government resources. Reamer’s July 16 e-mail discounts a communication of fraud:

the only proof of fraud that we documented is that financial statement manipulation entries were being recorded by dealership personnel which is something we see all the time on the audits my staff completes. The idea that dealership funds were diverted from the dealership is based solely on speculation and innuendo created by someone else in the company. . . . I don't have any documented proof to support an investigation . . . other than to recognize the possibility that it could have happened.

Reamer Resp. Mot. for S.J., Ex. 12 (July 16, 2006 email). In the same communication, Reamer expressed his concern that he does not want to be accused of sending someone on a “wild goose chase.”

Reviewing the record below, we agree with the ALJ that Reamer's communications do not satisfy his burden to overcome Ford Credit's motion for summary decision. We find Reamer has proffered no evidence sufficient to generate a genuine issue of material fact that he communicated a reasonable belief of a violation of sections 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. Reamer's arguments on appeal to the contrary are insufficient to raise a genuine issue of fact as to the reasonableness of his belief.⁴ Thus, we find that the ALJ did not err in granting summary decision in favor of Ford Credit.

2. Coverage

Ford Credit also moved for summary judgment on the lack of coverage because it does not have a class of shares registered under Section 12, nor is it required to file under Section 15(d) of the Exchange Act⁵ Ford Credit is a wholly owned subsidiary of Ford Motors, and Ford Motors is registered under Section 12 or required to file under 15(d) of the Exchange Act.

⁴ See, e.g., *Franks v. Nimmo*, 796 F.2d 1230 (10th Cir. 1986) (not every contrary assertion is sufficient to raise a genuine issue of fact).

⁵ Section 806 of the Act prohibits a “company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), or any officer, employee, contractor, subcontractor or agent of such company . . .” from discharging, demoting, suspending, or in any other manner discriminating against an employee in the terms and conditions of employment because that employee engaged in protected activity under Section 806. 18 U.S.C.A. § 1514A.

⁶ We note, nevertheless, that the Board held in *Johnson v. Siemens Bldg. Techs.* that a consolidated subsidiary is covered under SOX Section 806 as amended by Section 929A of the Dodd-Frank Act. ARB No. 08-032, ALJ No. 2005-SOX-015, slip op. at 16 (ARB Mar. 31, 2011).

The ALJ denied Ford Credit's motion for summary decision for lack of coverage and concluded that, for purposes of summary judgment, Ford Credit was Reamer's employer and was subject to the Act. D. & O. at 8. Because we affirm the ALJ's grant of summary decision against Reamer for lack of protected activity, we need not address the coverage of Ford Credit under Section 806.⁶

3. Motion for attorney's fees

Finally, Ford Credit requested attorney's fees and costs because Reamer's SOX complaint and appeal were frivolous or brought in bad faith. Ford Pet. for Attorney Fees; Br. for Attorney Fees. The SOX's implementing regulations provide, "[A] named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board. . . . To be effective a petition must be filed within 10 business days of the date of the decision of the administrative law judge." 29 C.F.R. 1980.110(a). Ford Credit filed a timely petition on January 27, 2009. Nevertheless, we find that Reamer's complaint contains at least an arguable basis in law because it is based on his contention that Ford Credit retaliated because of SOX-protected activity. *Reddy v. Medquist, Inc.*, ARB No. 04-123, ALJ No. 2004-SOX-035 (ARB Sept. 30, 2005) (denying Respondent's motion for attorney's fees). Therefore, we deny Ford Credit's request for attorney's fees.

CONCLUSION

For the above reasons, we affirm the ALJ's dismissal of Reamer's complaint for failing to generate a genuine issue of material fact that Reamer engaged in protected activity under the SOX. We deny Ford Credit's motion for attorney's fees.

SO ORDERED.

LUIS A. CORCHADO
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge