



**In the Matter of:**

**CHELSEA ELIZABETH GREENE,**

**ARB CASE NO. 09-109**

**COMPLAINANT,**

**ALJ CASE NO. 2009-SOX-044**

**v.**

**DATE: April 4, 2011**

**OMNI VISIONS, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Chelsea Elizabeth Greene, *pro se*, Southern Pines, North Carolina**

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge* and Joanne Royce, *Administrative Appeals Judge***

**DECISION AND ORDER DENYING MOTION FOR RECONSIDERATION**

The Complainant, Chelsea Elizabeth Greene, filed a complaint alleging that the Respondent, Omni Visions, Inc., retaliated against her 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),<sup>1</sup> and its implementing regulations when it terminated her employment.<sup>2</sup> A Department of Labor Administrative

---

<sup>1</sup> 18 U.S.C.A. § 1514(A)(Thomson/West Supp. 2010).

<sup>2</sup> 29 C.F.R. Part 1980 (2010).

Law Judge (ALJ) issued an Order of Dismissal (O. D.) finding that Greene failed to show cause why the complaint should not be dismissed because she failed to timely file her complaint within ninety days of the date on which Omni Visions terminated her employment. On March 9, 2011, the Board issued a Final Decision and Order affirming the ALJ's O. D. and dismissing Greene's appeal because she had failed to timely file her complaint and had demonstrated no basis for tolling the applicable limitations period. Greene filed a Motion for Reconsideration with the Board dated March 21, 2011.

## DISCUSSION

The ARB may reconsider a decision upon the filing of a motion for reconsideration within a reasonable time of the date on which the ARB issued the decision.<sup>3</sup> Moving for reconsideration of a final administrative decision is analogous to petitioning for panel rehearing under Rule 40 of the Federal Rules of Appellate Procedure. Rule 40 expressly requires that any petition for rehearing "state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended . . . ."<sup>4</sup> In considering a motion for reconsideration, the ARB has applied a four-part test to determine whether the movant has demonstrated:

- (i) material differences in fact or law from that presented to a court of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the court's decision, (iii) a change in the law after the court's decision, and (iv) failure to consider material facts presented to the court before its decision.<sup>[5]</sup>

Greene has neither addressed, nor demonstrated that any of the provisions of this four-part test apply. In moving for reconsideration, she presents no new material matters of law or fact of which she could not have known through reasonable diligence. Instead, she repeats her previous arguments that (1) she was precluded from filing her SOX complaint while her False Claims Act was "under seal" and (2) she should be excused from complying with the limitations period because of the serious nature of her complaints. We considered, but rejected, these arguments when we held that Greene had failed to demonstrate any basis for tolling the limitations period.

---

<sup>3</sup> *Henrich v. Ecolab, Inc.*, ARB No. 05-030, ALJ No. 2004-SOX-051, slip op. at 11 (ARB May 30, 2007).

<sup>4</sup> Fed. R. App. P. 40(a)(2).

<sup>5</sup> *Getman v. Southwest Secs., Inc.*, ARB No. 04-059, ALJ No. 2003-SOX-008, slip op. at 1-2 (ARB Mar. 7, 2006).

We reiterate, the ninety-day limitations period for filing a SOX complaint had already expired before Greene had filed her False Claims Act case, so even if Greene had established that the seal would have precluded the filing of the SOX case while the False Claims Act was pending, the seal did not preclude the timely filing of her SOX complaint before she filed her False Claims Act case. Furthermore even if Greene could have established that the seal precluded her from filing the SOX complaint prior to the filing of the False Claims Act case, Greene's complaint would still be untimely because she waited 517 days after she dismissed her False Claims Act case to file her SOX complaint. At most, she had ninety days to file her SOX complaint, from the date she dismissed her False Claims Act case. Therefore even if the limitations period had been tolled during the pendency of her False Claims Act case, she still failed to timely file her complaint. Furthermore, as we held in our Final Decision and Order, the seriousness of the complaint does not provide a sufficient basis for tolling the limitations period.<sup>6</sup>

Accordingly, Greene's Motion for Reconsideration is **DENIED**.

**SO ORDERED.**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**JOANNE ROYCE**  
**Administrative Appeals Judge**

---

<sup>6</sup> F. D. O. at 7-8.