



In the Matter of:

MATTHEW VANNOY,
COMPLAINANT,

ARB CASE NO. 09-118

ALJ CASE NO. 2008-SOX-064

v.

DATE: December 19, 2011

CELANESE CORPORATION,
RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

F. Benjamin Riek III, Esq., Richardson, Texas

For the Respondent:

**Stephen B. Higgins, Esq., Charles M. Poplstein, Esq., Clayton L. Thompson, Esq.,
Thompson Coburn LLP, St. Louis, Missouri**

**Before: Paul M. Igasaki, Chief Administrative Appeals Judge; Joanne Royce, Administrative
Appeals Judge; Lisa Wilson Edwards, Administrative Appeals Judge**

ORDER DENYING RECONSIDERATION

This case is before the Administrative Review Board (ARB or Board) from a complaint Matthew Vannoy filed under the employee protection provisions of Section 806 of the Corporate and Criminal Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C.A. § 1514A (Thomson/West Supp. 2011)(SOX), and its implementing regulations. See 29 C.F.R. Part 1980 (2011). Vannoy alleged that his employer, Celanese Corporation (Celanese), violated SOX when it terminated his employment. The complaint was dismissed following an investigation by the Occupational Safety and Health Administration (OSHA).

Vannoy requested a hearing before a Department of Labor Administrative Law Judge (ALJ), and filed an amended complaint. Prior to hearing, Celanese moved for summary decision and dismissal of the complaint. The ALJ granted the motion on June 24, 2009, and Vannoy petitioned the ARB for review. On September 28, 2011, we issued a Final Decision and Order (F. D. & O.) reversing and remanding the case for an evidentiary hearing. On October 28, 2011, Celanese petitioned the ARB for reconsideration. We deny the petition.

The ARB is authorized to reconsider a decision upon the filing of a motion for reconsideration within a reasonable time of the date on which the Board issued the decision. *Avlon v. American Express Co.*, ARB No. 09-089, ALJ No. 2009-SOX-051, slip op. at 5 (ARB Sept. 15, 2011); *Henrich v. Ecolab Inc.*, ARB No. 05-030, ALJ No. 2004-SOX-051, slip op. at 11 (ARB May 30, 2007). In considering whether to reconsider a decision, the ARB applies a four-part test to determine whether the movant has demonstrated: (i) material differences in fact or law from that presented to the Board of which the moving party could not have known through reasonable diligence; (ii) new material facts that occurred after the Board's original decision; (iii) a change in the law after the Board's decision; and (iv) failure to consider a material fact presented to the Board before its decision. *Id.*

Celanese asserts that the ARB failed to address an alternative ground for the ALJ's summary decision dismissing the complaint, namely that Vannoy would have been dismissed despite his alleged protected activity. Celanese Petition at 2-7. Celanese states that when Vannoy was dismissed, company officials were not aware that he had shared employee data for the purpose of reporting accounting violations to the IRS. *Id.* at 4. However, facts as to when Vannoy reported information to the IRS, and whether and when company officials learned about the disclosures are in dispute (see Amended Complaint at ¶¶ 84) and must be resolved by the parties at an evidentiary hearing. See F. D. & O. at 14-16. Further, regardless whether the record as presently constituted reflects when company officials learned about Vannoy's reports to the IRS, the record does reflect that Vannoy filed his first official "Business Conduct Policy" (BCP) complaint with company officials in 2007, and repeatedly raised concerns to management that certain accounting practices caused the company to misstate financial records and underestimate its tax burden in violation of company policy and federal law. F. D. & O. at 10; see also Amended Complaint at ¶¶ 54 & 100 (Vannoy's complaint alleged that the company's accounting practices violated "IRS and U.S. securities laws"). These are the same complaints that he claims to have made to the IRS and may likewise constitute protected activity. See F. D. & O. at 12.

As to the other issues Celanese raised, none involve any new issue of material fact or law, nor new facts not otherwise in the record, nor any change of law that would warrant reconsideration.

Accordingly, Celanese's motion for reconsideration is **DENIED**.

SO ORDERED.

LISA WILSON EDWARDS
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge