



**DALE B. ADAMS,**

**ARB CASE NO. 10-017**

**COMPLAINANT,**

**ALJ CASE NO. 2009-SOX-061**

**v.**

**DATE: February 16, 2010**

**TYSON FOODS, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**Dale B. Adams, *pro se*, Harrison, Arizona**

*For the Respondent:*

**Kathlyn Graves, Esq., *Mitchell, Williams, Selig, Gates, & Woodyard, P.L.L.C.*,  
Little Rock, Arkansas**

**FINAL DECISION AND ORDER GRANTING MOTION TO WITHDRAW  
COMPLAINT**

On June 18, 2009, the Complainant, Dale B. Adams, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration alleging that the Respondent, Tyson Foods, Inc., had retaliated against him in violation of the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX).<sup>1</sup> On

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<sup>1</sup> 18 U.S.C.A. § 1514A (West 2002). The 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 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,

October 14, 2009, a Department of Labor Administrative Law Judge (ALJ) issued an Order Dismissing Complaint in this case, finding that Adams had failed to state a complaint upon which relief could be granted. In particular, the ALJ concluded that Adams failed to state that he engaged in activity that the SOX protects because the communications Adams alleged that he made to his co-workers were related to food-safety and equal opportunity issues, but not to violations of any of the statutes or regulations set forth in the SOX.<sup>2</sup>

Adams filed a petition for review with the Administrative Review Board. The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under SOX.<sup>3</sup>

On December 28, 2009, the Board received a Motion to Withdraw SOX Claim from Adams, in which he stated his intention to bring an action in federal court, as authorized by 29 C.F.R. § 1980.114(a), for de novo review of the claim currently pending before the Board. 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 have jurisdiction over the action without regard to the amount in controversy.<sup>4</sup> Accordingly, we ordered the parties to show cause no later than January 22, 2010, why the Board should not dismiss Adams's claim pursuant to 29 C.F.R. § 1980.114.

Adams filed a response urging the Board to grant his motion to withdraw. On January 28, 2010, Tyson filed an untimely response to the Board's show cause order and explained that its counsel did not receive the order until January 25th. Tyson argues that the Board should deny Adams's motion to dismiss because the parties filed briefs with the Board before the 180-day period ran. But, the SOX and its regulations provide that a complainant is entitled to dismissal and the opportunity to proceed in district court if "there is no showing that the complainant has acted in bad faith to delay the

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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.

<sup>2</sup> *Adams v. Tyson Foods, Inc.*, 2009-SOX-061, slip op. at 4 (Oct. 14, 2009).

<sup>3</sup> Secretary's Order No. 1-2010, 75 Fed. Reg. 3924 (Jan. 15, 2010); 29 C.F.R. § 1980.110(a)(2009).

<sup>4</sup> 18 U.S.C.A. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114.

proceedings.”<sup>5</sup> Tyson has not shown, nor even alleged, that Adams has acted in bad faith to delay the proceedings. Accordingly, we **GRANT** Adams’s motion to withdraw his claim so that he may proceed in district court.

**SO ORDERED.**

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

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

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<sup>5</sup> *Id.*