



In the Matter of:

JUAN PEREZ,

ARB CASE NO. 10-038

COMPLAINANT,

ALJ CASE NO. 2009-SOX-042

v.

DATE: March 18, 2010

H & R BLOCK, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Respondent:

Paul F. Pautler Jr., Esq., R. Anthony Costello, Esq., *Husch Backwell Sanders, LLP*, Kansas City , Missouri

FINAL DECISION AND ORDER DISMISSING APPEAL

BACKGROUND

Juan Perez filed a complaint with the Department of Labor's Occupational Safety and Health Administration alleging that the Respondents, H & R Block, Inc., retaliated against him in violation of the employee protection provisions of the Sarbanes-Oxley Act (SOX)¹ The Administrative Review Board must determine whether to dismiss Perez's

¹ 18 U.S.C.A. § 1514A (West Supp. 2009). 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

petition for review since he failed to file an initial brief with the Board in support of his petition. Because Perez has failed to timely file his opening brief and to demonstrate good cause for his failure to do so, we conclude that his petition for review should be dismissed.

The Respondent is the parent company of a subsidiary that employed Perez. A Labor Department Administrative Law Judge (ALJ) found that Perez failed to establish that he was entitled to proceed against the parent company under the SOX's whistleblower protection provisions.² Accordingly, the ALJ dismissed Perez's SOX complaint.

Perez petitioned the Administrative Review Board for review of the ALJ's decision.³ On, January 6, 2010, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule ordering Perez, to file an initial brief in this case "on or before **February 5, 2010.**" The Board's Order specifically provided, "If the Complainant fails to file the initial brief on time, the Board may dismiss his appeal. *See, e.g., McQuade v. Oak Ridge Operations Office*, ARB No. 02-087, ALJ Nos. 1999-CAA-007 to -010 (ARB Oct. 18, 2002); *Pickett v. TVA*, ARB No. 02-076, ALJ No. 2001-CAA-018 (ARB Oct. 9, 2002)." Perez has not filed an initial brief as specified in the Board's Order.

Because Perez failed to file his opening brief, we ordered him to show cause no later than March 4, 2010, why we should not dismiss his petition for review because he has failed to prosecute his appeal in accordance with the Board's briefing order. The Board warned Perez that if the Board did not receive his response to this order on or before March 4, the Board may dismiss the appeal without further notice to the parties. Perez did not file a response to the Board's order. The show cause order also permitted the Respondent to file a reply to Perez's response and suspended the briefing schedule pending the Board's ruling on the Order to Show Cause. H & R. Block, Inc. filed a response to the Board's Order urging the Board to dismiss Perez's appeal in its entirety and with prejudice.

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 *Perez v. H & R Block, Inc.*, ALJ No. 2009-SOX-042, slip op. at 17 (Dec. 1, 2009)(R. D. & O.).

³ *See* 29 C.F.R. § 1980.110(a)(2009). The Secretary of Labor has delegated her authority to issue final agency decisions under the SOX to the ARB. Secretary's Order No. 1-2010, 75 Fed. Reg. 3924 (Jan. 15, 2010).

DISCUSSION

The Board's authority to effectively manage its docket, including authority to require compliance with Board briefing orders, is necessary to "achieve orderly and expeditious disposition of cases."⁴ This Board has authority to issue sanctions, including dismissal, for a party's failure to comply with the Board's orders and briefing requirements.⁵

Perez did not respond to the Board's Order to Show Cause and thus has failed to demonstrate good cause for failing to prosecute his appeal by filing his opening brief. The Board cautioned Perez about the consequences of failing to comply with the Board's briefing order. Nonetheless Perez failed to file an opening brief in accordance with the Board's briefing order. Accordingly, we **DISMISS** Perez's appeal.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

⁴ *Link v. Wabash*, 370 U.S. 626, 630-31 (1962).

⁵ *Blodgett v. TVEC*, ARB No. 03-043, ALJ No. 2003-CAA-007 (ARB Mar. 19, 2003). *See also Powers v. Pinnacle Airlines, Inc.*, ARB No. 04-102, ALJ No. 2004-AIR-006 (ARB Dec. 30, 2004, Reissued Jan. 5, 2005), *aff'd sub nom. Powers v. U.S. Dep't of Labor, et al.*, Nos. 04-4441/05-3266 (6th Cir. Jan. 26, 2006); *Powers v. Pinnacle Airlines, Inc.*, ARB No. 04-035, ALJ No. 2003-AIR-012 (ARB Sept. 28, 2004), *aff'd sub nom. Powers v. U.S. Dep't of Labor, et al.*, Nos. 04-4441/05-3266 (6th Cir. Jan. 26, 2006); *cf.* Fed. R. App. P. 31(c) (allowing dismissal as sanction for failure to file a conforming brief); Fed R. App. P. 41(b) (permitting courts to dismiss a complaint for failure to comply with court orders).