PETER J. VROOM,

COMPLAINANT,

v.

GENERAL ELECTRIC COMPANY,
and BRIAN HARD,

RESPONDENTS.

ARB CASE NO. 10-121

ALJ CASE NO. 2010-SOX-019

DATE: November 8, 2010

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:
Kenneth A. Martin, Esq., ***Martin Law Firm,*** **McLean, Virginia**

For the Respondent General Electric Company:
W. John Lee, Esq., ***Morgan Lewis*****, Philadelphia, Pennsylvania**

For the Respondent Brian Hard:
Michael N. Petkovich, Esq., and Andrew S. Cabana, Esq., ***Jackson Lewis LLP*****, Reston, Virginia**

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

FINAL DECISION AND ORDER DISMISSING COMPLAINT

On October 6, 2009, the Complainant, Peter J. Vroom, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration alleging that the Respondents, General Electric Company and Brian Hard, had retaliated against him in violation of the whistleblower protection provisions of the Sarbanes-Oxley

Act of 2002 (SOX).[1] On June 25, 2010, a Department of Labor Administrative Law Judge (ALJ) issued an Order Granting Requests for Reconsideration and for Summary Judgment in this case, finding that Vroom had failed to show that he engaged in SOX-protected activity.[2]

Vroom 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.[3]

On October 4, 2010, the Board received a Notice of Intent to File in Federal Court, in which Vroom stated that he intended 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. Accordingly, he requested that the Board dismiss his SOX complaint.

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.[4] Accordingly, we ordered the parties to show cause no later than October, 22, 2010, why the Board should not dismiss Vroom's claim pursuant to 29 C.F.R. § 1980.114. General Electric, Hard, and Vroom filed responses to the Board's order, and Vroom filed a reply to the Respondents' responses. Vroom also informed the Board on November 4, 2010, that he had filed an action in district court pursuant to 29 C.F.R. § 1980.114(a).

General Electric and Hard argue that the Board should deny Vroom's motion to dismiss because when he amended his complaints, changed respondents, and took

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[1] 18 U.S.C.A. § 1514A (Thomson/West Supp. 2010). 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, 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] Order Granting Requests for Reconsideration and for Summary Judgment at 9.

[3] 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); 29 C.F.R. § 1980.110(a)(2010).

[4] 18 U.S.C.A. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114.

procedural steps to extend the life of his case, he acted in bad faith to delay the proceedings. But neither Respondent has pointed to any evidence of record that the ALJ considered that Vroom took these actions in the litigation before her in bad faith. Nor do these actions, as recounted, appear on their face to be so outside the realm of good practice that Vroom obviously took them in bad faith in an intentional attempt to run out the clock. Furthermore it appears obvious that Vroom did not employ these tactics in a concerted attempt to prolong the litigation so that he could file in district court before the administrative litigation was completed because he waited an additional six months after the 180-day period expired to indicate his intention to file in district court – hardly the actions of a party who has prolonged the litigation in bad faith so that he could race to district court before the Department issued its final decision.

General Electric also argues that we should deny Vroom's motion because he failed to serve his original intent to file notification on General Electric as the SOX regulations require,[5] and that if he had done so it would have urged the Board to decide the case before the fifteen-day-notice period expired. It appears that Vroom's failure to serve General Electric was inadvertent; the result of an incorrectly addressed e-mail. In any event, General Electric has not been harmed by this omission because even if it had filed a motion urging the Board to decide the case during the notification period, the Board would have denied the motion given the press of work before it and the cases it was already in the process of deciding.

Finally, General Electric joins with Hard in arguing that Vroom's complaint is not properly before the ARB because the ALJ found the complaint to be subject to arbitration, and Vroom did not timely appeal this finding. But the only grounds the regulations permit the ARB to consider when disposing of a motion to dismiss to file anew in district court is whether the complainant has acted in bad faith. Since the Respondents have failed to establish that Vroom did so, we must grant his motion to dismiss. If the Respondents have substantive arguments in opposition to Vroom's complaint, they may raise them in the district court action. Accordingly, we **GRANT** Vroom's motion to withdraw his complainant so that he may proceed in district court.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

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[5] 29 C.F.R. § 1980.114(a),