



PAUL W. SIMKUS,

ARB CASE NO. 11-022

COMPLAINANT,

ALJ CASE NO. 2010-SOX-048

v.

DATE: April 5, 2011

UNITED AIRLINES, INC.,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER DISMISSING COMPLAINT

On May 10, 2010, the Complainant, Paul W. Simkus, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration alleging that the Respondent, United Airlines, Inc., had retaliated against him in violation of the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX).¹ On December 22, 2010, a Department of Labor Administrative Law Judge (ALJ) issued an Order Dismissing Complaint, finding that Simkus had failed to state a complaint upon which relief could be granted under the SOX.²

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 Dismissing Complaint at 8.

Simkus filed a petition for review with the Administrative Review Board on January 6, 2011.³ In this petition, Simkus indicated that he intended to file a complaint in federal district court, as authorized by 29 C.F.R. § 1980.114(a), for de novo review. 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

On April 1, 2011, Simkus filed a motion to dismiss his complaint before the Department of Labor because he had filed his SOX complaint in the United States District Court for the Northern District of Illinois on March 29, 2011. Accordingly because Simkus's SOX complaint is currently pending in federal district court, his SOX complaint before the Department of Labor is **DISMISSED**.

FOR THE ADMINISTRATIVE REVIEW BOARD:

Janet R. Dunlop
General Counsel

Note: Questions regarding any case pending before the Board should be directed to the Board's paralegal specialists, at (202) 693-6207 (telephone) or (202) 693-6220 (facsimile).

³ The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under SOX. 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.