



TAMER ADEL,

ARB CASE NO. 11-053

COMPLAINANT,

ALJ CASE NO. 2011-SOX-009

v.

DATE: January 9, 2012

SCHLUMBERGER, N.V. (LTD.),

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

David N. Mair, Esq., Kaiser Saurborn & Mair, P.C., New York, New York

For the Respondent:

Amy Karff Halevy, Esq., Bracewell & Guiliani, LLP, Houston, Texas

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

FINAL DECISION AND ORDER DISMISSING COMPLAINT

On September 27, 2010, the Complainant, Tamer Adel, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration alleging that the Respondent, Schlumberger, N.V., had retaliated against him in violation of the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX).¹

¹ 18 U.S.C.A. § 1514A (Thomson/West Supp. 2011). SOX 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

On April 27, 2011, a Department of Labor Administrative Law Judge (ALJ) issued an Order Granting Respondent's Motion for Summary Decision and Order Dismissing Complaint in this case, finding that Adel had established no genuine question of fact regarding whether he had engaged in protected activity, a prerequisite to an actionable SOX complaint.²

Adel 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 November 11, 2011, the Board received a Notice of Intent to File Complaint in the United States District Court from Adel, in which he stated that he intended to bring an action in federal court, as authorized by 29 C.F.R. § 1980.114(a)(2011), 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.⁴ Accordingly, we ordered the parties to show cause no later than December 14, 2011, why the Board should not dismiss Adel's claim pursuant to 29 C.F.R. § 1980.114. We cautioned the parties that should either party fail to timely reply to this Order, the Board may dismiss this claim without further notice.

In response to notification that the parties intended to engage in mediation in an attempt to settle the case, the Board issued an order extending the date to respond to the order to show cause until December 31, 2011. Neither party has responded to the Board's show cause order. However, on January 4, 2012, the Board received a letter from Adel's attorney indicating that Adel had filed a pro se action for de novo review of this case in the United States District Court for the Southern District of Texas. Adel's counsel attached a copy of Adel's "*Pro Se Complaint*" to his letter.

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 Slip op. at 5.

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)(2009).

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

Accordingly, as neither party has shown cause why the Board should not dismiss Adel's complaint as provided in 29 C.F.R. § 1980.114, the complaint is **DISMISSED**.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge