



In the Matter of:

ANGELA DEVONNE DAMPEER,

ARB CASE NO. 12-006

COMPLAINANT,

ALJ CASE NO. 2011-SOX-033

v.

DATE: May 31, 2013

**JACOBS TECHNOLOGY –
ENGINEERING AND SCIENCE GROUP,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Sharon H. Sanders, Esq.; *The Law Office of Sharon H. Sanders*, Houston, Texas

For the Respondents:

Marion F. Walker, Esq.; Birmingham, Alabama

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Luis A. Corchado, *Administrative Appeals Judge*; Lisa Wilson Edwards, *Administrative Appeals Judge*

FINAL DECISION AND ORDER

Angela Devonne Dampeer filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that her former employer, Jacobs Technology, retaliated against her in violation of the employee whistleblower protection provisions at Section 806 of the Sarbanes-Oxley Act of 2002 (SOX).¹ Dampeer

¹ 18 U.S.C.A. § 1514A (West Supp. 2012). Implementing regulations appear at 29 C.F.R. Part 1980 (2012).

appeals from a Decision and Order (D. & O.) that a Department of Labor Administrative Law Judge issued dismissing Dampeer's complaint after a hearing on the merits because he found that she failed to demonstrate that she engaged in protected activity under the SOX. We summarily affirm.

Dampeer asserts that Jacobs Technology terminated her employment because she engaged in protected activity. To prevail on her whistleblower complaint, Dampeer must prove by a preponderance of the evidence that (1) she engaged in protected activity, (2) which protected activity was a contributing factor in, (3) adverse action that was taken against her.² The failure to prove any one of these elements necessarily requires dismissal of a SOX whistleblower claim.³ The ARB reviews an ALJ's findings of fact under the substantial evidence standard.⁴

After a formal hearing and consideration of all evidence received,⁵ the ALJ determined that Dampeer failed to demonstrate that she engaged in protected activity under the SOX. Dampeer was employed in the Jacobs Technology Human Resources Department in Houston, Texas.⁶ In June 2010, she refused to verify a job title or coding change on an employee's personnel profile because she believed it would be against company policy.⁷ Later, in August 2010, Dampeer's supervisor informed her that the employee's personnel file was part of an internal company "Sarbanes-Oxley" audit and asked Dampeer to verify the employee's job title or coding change, after assuring Dampeer that it was not against company policy to do so. Dampeer again refused, testifying that she did so because she still believed it would be against company policy and also because she believed to alter a file subject to a "Sarbanes-Oxley" audit would be illegal.⁸ Subsequently, on November 8, 2010, Dampeer was terminated as part of a company reduction in force.⁹

The ALJ found that Dampeer failed to establish that her refusal to verify the job profile was based on an actual subjective or objective reasonable and genuine belief that the verification

² See 18 U.S.C.A. § 1514A(b)(2).

³ *Klopfenstein v. PCC Flow Techs. Holdings, Inc.*, ARB Nos. 07-021, 07-022; ALJ No. 2004-SOX-011, slip op. at 3 (ARB Jan. 13, 2010) (citing *Davis v. Rock Hard Aggregate, LLC*, ARB No. 07-041, ALJ No. 2007-STA-041 (ARB Mar. 27, 2009)).

⁴ 20 C.F.R. § 1980.110(b).

⁵ D. & O. at 1.

⁶ Respondent's Exhibit (RX) 4.

⁷ Hearing Transcript (HT) at 105-109.

⁸ HT at 110-111, 114-115, 195, 348-349, 354.

⁹ RX 20.

would constitute a violation of any conduct prohibited by SOX Section 806.¹⁰ Specifically, the ALJ noted that Dampeer's initial concern in June 2010 in regard to verifying the job title or coding change was only over potentially violating an internal company policy. It was not until two months later, after Dampeer was asked to verify the employee's job title or coding change as part of the internal company "Sarbanes-Oxley" audit, that Dampeer alleged any concern that the verification would constitute a SOX violation. Thus, given the background to Dampeer's concern about verifying the job title or coding change, the ALJ was not convinced of the reasonableness of Dampeer's alleged concern that to do so would constitute a SOX violation. While this is a close case, substantial evidence supports the ALJ's finding that Dampeer's actual concern about verifying the job title or coding change pertained to an internal company policy issue, not to a SOX violation concern.

CONCLUSION

Substantial evidence supports the ALJ's conclusion that Dampeer failed to demonstrate that she engaged in protected activity under the SOX. Accordingly, the ALJ's Decision and Order dismissing Dampeer's complaint is **AFFIRMED**.

SO ORDERED.

LUIS A. CORCHADO
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LISA WILSON EDWARDS
Administrative Appeals Judge

¹⁰ D. & O. at 5-6; *see Sylvester v. Paraxel Int'l LLC*, ARB No. 07-123, ALJ Nos. 2007-SOX-039, 2007-SOX-042; slip op. at 14 (ARB May 25, 2011), *citing* 18 U.S.C.A. § 1514A(a)(1); *see also Harp v. Charter Comm'ns*, 558 F.3d 722, 723 (7th Cir. 2009).