



In the Matter of:

HUNTER R. LEVI,

COMPLAINANT,

v.

**AEROTEK, INC., and
ALLEGIS GROUP,**

RESPONDENTS.

and

HUNTER R. LEVI,

COMPLAINANT,

v.

STEPHEN BISCIOTTI,

RESPONDENT.

ARB CASE NO. 12-077

ALJ CASE NO. 2012-SOX-011

DATE: September 6, 2012

ALJ CASE NO. 2012-SOX-012

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Complainant:

Hunter R. Levi, *pro se*, Overland Park, Kansas

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge* and Luis A. Corchado, *Administrative Appeals Judge*

FINAL DECISION AND ORDER WITHDRAWING ORDER TO SHOW CAUSE AND DISMISSING APPEAL

The Complainant, Hunter R. Levi, filed complaints alleging that the Respondents retaliated against him in violation of the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX).¹ On May 31, 2012, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order Dismissing Complaint (D. & O.) in which he dismissed Levi's complaint because he found that Levi failed to timely file it, the Respondents are not publicly-traded companies, and Levi "repeatedly attempted to 'sandbag' the Respondents by failing to provide proper notice to record counsel and by repetitively failing to follow procedural Orders."²

The Secretary of Labor has delegated her authority to issue final agency decisions under the SOX to the Administrative Review Board.³ To perfect a timely appeal from an administrative law judge's decision, a party must file a petition for review with the Board within ten business days of the date on which the judge issued his decision.⁴

Levi filed a petition for review, which was dated June 14, 2012, and which he stated was served on June 15, 2012. The Board received its copy on June 22, 2012. Under the SOX's implementing regulations, the petition for review was to be filed no later than June 14, 2012. Thus it appeared that Levi had filed his petition for review more than 10 business days from the date on which the ALJ issued his D. & O.

The SOX's limitations period is not jurisdictional and therefore is subject to equitable modification.⁵ Therefore, on July 16, 2012, we ordered Levi to show cause, within fourteen (14) days of the date of the Board's show cause order, why the petition should not be dismissed as untimely.

In response to the Board's Order, Levi filed a letter to the Chief Judge requesting that the Board withdraw its show cause order because at the time the Board issued it, the ALJ's D. & O. had already become the final order of the Secretary of Labor. Levi argues that pursuant to 29 C.F.R. § 1980.110(b):

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

² D. & O. slip op. at 2.

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).

⁴ See 29 C.F.R. § 1980.110(a). The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing.

⁵ *Accord Hillis v. Knochel Bros.*, ARB Nos. 03-136, 04-081, 04-148; ALJ No. 2002-STA-050, slip op. at 3 (ARB Oct. 19, 2004); *Overall v. Tennessee Valley Auth.*, ARB No. 98-011, ALJ No. 1997-ERA-053, slip op. at 40-43 (ARB Apr. 30, 2001).

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the ALJ will become the final order of the Secretary unless the ARB, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review.

(Emphasis added).

But Levi's argument overlooks the fact that 29 C.F.R. § 1980.110(b) is inapplicable here because he admittedly did not timely file the petition for review⁶ within ten (10) business days of the date the ALJ issued his D. & O. Nevertheless, instead of responding to the order to show cause with an attempt to establish that the limitations period should be tolled, Levi has requested that we withdraw the order. Accordingly we **GRANT** his request, **WITHDRAW** the order to show cause, and **DISMISS** his appeal as untimely.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge

⁶ On page 1 of his request for withdrawal of the show cause order, Levi, referring to the date on which he filed his petition for review, states, "which Levi filed on June 15, 2012."