



IN THE MATTER OF:

DINAH R. GUNTHER,

COMPLAINANT,

v.

DELTEK, INC.,

RESPONDENT.

ARB CASE NOS. 12-097
12-099

ALJ CASE NO. 2010-SOX-049

DATE: September 11, 2012

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Paul M. Igasaki, *Chief Administrative Appeals Judge*, and E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*

ORDER DISMISSING INTERLOCUTORY APPEALS

The Complainant, Dinah R. Gunther, and the Respondent, Deltek, Inc., have both filed interlocutory appeals of a Department of Labor Administrative Law Judge's Decision and Order Granting Claim in Part and Dismissing Individual Respondents (D. & O.) finding that the Respondent violated its statutory obligations under the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX).¹ The Administrative Law Judge (ALJ) stated in her D. & O., "**IT IS FURTHER ORDERED** that the parties shall address the issue of damages resulting from the Complainant's termination as set forth above, and the issue of damages will be addressed in a supplemental order."² Although the ALJ anticipated issuing further orders in this case, and had not fully disposed of the complaint before her, she nevertheless included a Notice of Appeal Rights in her D. & O.

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

² D. & O. at 33.

The Secretary of Labor has delegated her authority to issue final administrative decisions in cases arising under the SOX to the Administrative Review Board.³ The Secretary's delegated authority to the Board includes, "discretionary authority to review interlocutory rulings in exceptional circumstances, provided such review is not prohibited by statute."⁴ Because the ALJ has not issued her final Decision and Order in this matter fully disposing of the Complainant's complaint, the requests that the Board review the ALJ's D. & O. are interlocutory appeals.

Where an ALJ has issued an order of which the party seeks interlocutory review, the ARB has elected to look to the procedures set forth in 28 U.S.C.A. § 1292(b) to determine whether to accept an interlocutory appeal for review.⁵ In *Plumley v. Federal Bureau of Prisons*,⁶ the Secretary ultimately concluded that because no ALJ had certified the questions of law raised by the respondent in his interlocutory appeal as provided in 28 U.S.C.A. § 1292(b), "an appeal from an interlocutory order such as this may not be taken."⁷ Furthermore, the Secretary of Labor and the Board have held many times that interlocutory appeals are generally disfavored and that there is a strong policy against piecemeal appeals.⁸

Because Gunther and Deltex were operating under the ALJ's Notice of Appeal Rights, it is understandable that they felt compelled to protect their appeal rights by filing an interlocutory appeal. However, because neither party had obtained the ALJ's certification or otherwise established grounds for an interlocutory appeal, we ordered both parties to show cause why the Board should not dismiss its interlocutory appeal for failure to establish grounds for such appeal. We cautioned the parties that failure to

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 *Id.* at § 5(c)(48).

⁵ *Powers v. Pinnacle Airlines, Inc.*, ARB No. 05-138, ALJ No. 2005-SOX-065, slip op. at 5 (ARB Oct. 31, 2005); *Plumley v. Federal Bureau of Prisons*, 1986-CAA-006 (Sec'y Apr. 29, 1987).

⁶ 1986-CAA-006 (Sec'y Apr. 29, 1987).

⁷ *Id.*, slip op. at 3 (citation omitted).

⁸ See e.g., *Welch v. Cardinal Bankshares Corp.*, ARB No. 04-054, ALJ No. 2003-SOX-015 (ARB May 13, 2004); *Hibler v. Exelon Generation Co., LLC*, ARB No. 03-106, ALJ No. 2003-ERA-009 (ARB Feb. 26, 2004); *Amato v. Assured Transp. & Delivery, Inc.*, ARB No. 98-167, ALJ No. 1998-TSC-006 (ARB Jan. 31, 2000); *Hasan v. Commonwealth Edison Co.*, ARB No. 99-097; ALJ No. 1999-ERA-017 (ARB Sept. 16, 1999); *Carter v. B & W Nuclear Techs., Inc.*, ALJ No. 1994-ERA-013 (Sec'y Sept. 28, 1994).

timely respond to the show cause order may result in dismissal of the appeal without further order.⁹

Neither party responded to the Board's show cause order. Accordingly, since neither party has established an entitlement to an interlocutory appeal, we **DISMISS** both interlocutory appeals, ARB Nos. 12-097 and 12-099.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWM
Deputy Chief Administrative Appeals Judge

⁹ *Accord Edmonds v. TVA*, ARB No. 05-02, ALJ No. 2004-CAA-015, slip op. at 3 (ARB July 22, 2005).