



KURT FUQUA,

ARB CASE NO. 14-014

COMPLAINANT,

ALJ CASE NO. 2013-SOX-046

v.

**SVOX AG; SVOX USA, INC.;
NUANCE COMMUNICATIONS, INC.;
VOLKER JANTZEN; EUGEN STERMTEZ;
MARTIN REBER; ERIC LEHMANN; and
THOMAS SOSEMAN,**

RESPONDENTS,

and

KURT FUQUA,

ARB CASE NO. 14-069

COMPLAINANT,

ALJ CASE NO. 2014-SOX-018

v.

DATE: August 27, 2014

**AMANDA INSKEEP, THOMAS W.
SOSEMAN, and SVOX AG;**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Kurt Fuqua, *pro se*, Buffalo Grove, Illinois

For the Respondents:

**John A. Ybarra, Esq.; Darren M. Mungerson, Esq.; Amanda E. Inskeep,
Esq.; *Little Mendelson, P.C.*, Chicago, Illinois**

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

FINAL ORDER CLOSING CASE 14-014

Complainant Kurt Fuqua filed two complaints with the Department of Labor's Occupational Safety and Health Administration (OSHA) under the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX).¹ Fuqua filed the first complaint captioned, "Kurt Fuqua v. SVOX AG, SVOX USA, INC., Nuance Communications, Inc., Volker Jantzen, Eugene Stermetz, Martin Reber, Eric Lehmann, Thomas Soseman" (Complaint 1) on November 16, 2012.² This complaint was assigned OSHA No. 5-2330-13-025. On August 15, 2003, the Secretary resolved OSHA Complaint No. 5-2330-13 and concluded that Fuqua failed to establish that he suffered an adverse employment action within the statutory limitations period for filing a SOX complaint. Fuqua requested a hearing on this complaint before Department of Labor Administrative Law Judge. ALJ Stephen L. Purcell issued an Order Granting Summary Judgment on November 27, 2013, and dismissed Fuqua's SOX complaint. On December 11, 2013, Fuqua filed a petition for review with the Administrative Review Board. The Board assigned this appeal ARB No. 14-014.

Fuqua filed a second complaint with OSHA on December 22, 2013. This complaint was captioned, "Kurt Fuqua v. Amanda E. Inskeep, Thomas W. Soseman, Svox AG. (Complaint 2). On January 27, 2014, the Secretary resolved this complaint and concluded that Fuqua had failed to allege that the respondents had taken adverse actions against him as defined by SOX. Fuqua requested a hearing before an Administrative Law Judge. ALJ Linda S. Chapman issued a Recommended Order of Dismissal on June 4, 2014. On June 18, 2014, Fuqua filed a petition for review with the Board. The Board assigned this appeal No. 14-069.

On June 1, 2014, Fuqua informed the Board in a letter with the caption "Re: ARB case No. 14-014 Fuqua v. SVOX AG et al.," that he had filed an action in federal court against Respondents SVOX USA Inc. and SVOX AG "and therefore remove these parties from the complaint currently before the ARB." But Fuqua stated that "I have not removed any other party and therefore continue to seek review of the complaint against the remaining parties by the ARB."

On July 14, 2014, Respondents SVOX AG; SVOX USA, Inc., Nuance Communications, Inc.; Volker Jantzen; Eugen Stermetz; Martin Reber; Eric Lehmann;

¹ 18 U.S.C.A. § 1514A (Thomson/West Supp. 2013). The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under SOX. Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012). 29 C.F.R. § 1980.110(a)(2013).

² Fuqua filed a "Second Amended Complaint" with an identical caption (except that Stermetz's first name was listed as Eugen) on May 30, 2013.

and Thomas Soseman, filed a “Notice of Filing of Suit in Federal District Court Depriving the Board of Jurisdiction.” In this Notice, the Respondents argue that Complainant Fuqua filed suit in the United States District Court for the Northern District of Illinois, Case No. 14-cv-000216, thereby depriving the Administrative Review Board of jurisdiction over these actions.³

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

The Board’s Order to Show Cause

Fuqua cited no authority allowing a complainant to partially withdraw an OSHA complaint pursuant to 18 U.S.C.A. § 1514A(b)(1)(B) and allowing the Board to retain jurisdiction over part of an OSHA claim. Accordingly, we ordered Fuqua to show cause why the Board should not dismiss his complaints pursuant to 18 U.S.C.A. § 1514A(b)(1)(B).

Both Fuqua and Respondents⁵ responded to the Board’s show cause order. Regarding his first petition for review (ARB No. 14-014), Fuqua argued that the Board should allow him to proceed against the named individual Respondents before the Board, while simultaneously proceeding against SVOX AG and SVOX USA, Inc. in district court pursuant to 18 U.S.C.A. § 1514A(b)(1)(B) because (1) international service of process on the individual respondents is difficult and costly, (2) he is entitled to the administrative remedy he seeks, and (3) the case against the individuals cannot be joined with the case he filed in district court. With respect to his second petition for review (ARB No. 14-069), Fuqua argues that this petition is based upon a separate complaint from the one giving rise to ARB No. 14-014; therefore, it should not be dismissed.

Respondents reply that the federal district court complaint encompasses both OSHA complaints (Complaint 1 and Complaint 2) and argues that the two OSHA

³ The Respondents listed only the Respondents from ARB No. 14-014 in the caption of its Notice, but listed both ARB Case Numbers (14-014 and 14-069).

⁴ 18 U.S.C.A. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114(a). The regulation additionally provides that “[w]ithin seven days after filing a complaint in Federal court, a complainant must file with . . . the ARB, . . . a copy of the file-stamped complaint.” 29 C.F.R. § 1980.114(b).

⁵ The caption for Respondents’ Reply to Response to Order to Show Cause included Inskeep.

complaints are “based on the same or overlapping facts.”⁶ Accordingly, they argue that the Board must dismiss both appeals (14-014 and 14-069) because the complaints upon which they are based are proceeding de novo in federal district court.

SOX section 1514(b)(1)(B) states that “if the Secretary has not issued a final decision within 180 days of the filing of **the complaint . . .**” the person alleging discrimination in violation of the SOX may bring “an **action at law or equity for de novo review** in the appropriate district court of the United States, which **shall have jurisdiction over such an action . . .**” (Emphasis added). According to this provision, the complaint and the action are one and the same and once a complainant files in district court for de novo review of “the complaint,” jurisdiction over “the complaint” rests with the district court.

Fuqua has provided no argument, nor has he cited to any precedent that convinces us that the Board has jurisdictional authority to bifurcate “the complaint” once an action on the complaint has been filed with the district court and thereby attempt to retain jurisdiction over some portion of the complaint. The fact that Fuqua may be inconvenienced by **his choice** to exercise the option to obtain de novo review in district court is not a sufficient basis to ignore the limit on our jurisdictional authority.

Therefore, we hold that pursuant to SOX section 1514(b)(1)(B), in regard to ARB 14-014 arising from Complaint 1, Fuqua has filed a complaint for de novo review in district court and that court now has complete jurisdiction of that action and the Board has none. Accordingly, 14-014 is hereby **CLOSED**.

However, whether Fuqua’s district court complaint also encompasses Complaint 2 is much less clear, at least at this juncture. The district court itself seemed uncertain of the status of Complaint 2.⁷ Accordingly, whether Fuqua’s district court complaint also transferred jurisdiction of Complaint 2 to the district court is an issue that will require consideration by a three-judge panel of the ARB, which will consider this question as the case arises in due course.

SO ORDERED.

LUIS A. CORCHADO
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

⁶ Reply to Response to Order to Show Cause at 4.

⁷ *Fuqua v. SVOX AG SVOX USA, Inc.*, No. 14 C 216, slip op. at 9 n.2 (N.D. Ill. Aug. 1, 2014)(“The ALJ rendered a decision on Complaint 2 on June 4, 2014. The parties have not advised the Court whether the disposition of that complaint bears at all on the jurisdictional issues presented by the plaintiff’s complaint in this Court or the defendants’ motion.”).