



**In the Matter of:**

**KURT FUQUA,**

**ARB CASE NO. 14-069**

**COMPLAINANT,**

**ALJ CASE NO. 2014-SOX-018**

**v.**

**DATE: September 2, 2015**

**SVOX AG, THOMAS SOSEMAN,  
AND AMANDA INSKEEP,**

**RESPONDENTS.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

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

***For the Respondents, SVOX AG and Amanda Inskeep:***

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

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

**FINAL ORDER CLOSING CASE 14-069**

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).<sup>1</sup> Fuqua filed the first complaint captioned, "Kurt Fuqua v. SVOX AG, SVOX USA, INC., Nuance Communications, Inc., Volker Jantzen,

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<sup>1</sup> 18 U.S.C.A. § 1514A (Thomson/West Supp. 2015). The Secretary of Labor has delegated to the Board 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)(2014).

Eugene Stermetz, Martin Reber, Eric Lehmann, Thomas Soseman” (Complaint 1) on November 16, 2012.<sup>2</sup> OSHA dismissed the complaint and Fuqua requested a hearing before a U.S. Department of Labor (DOL) Administrative Law Judge (ALJ). ALJ Stephen L. Purcell issued an Order Granting Summary Judgment on November 27, 2013, and dismissed the complaint. On December 11, 2013, Fuqua filed a petition for review with the Administrative Review Board (ARB or the Board). The Board assigned the appeal ARB No. 14-014.

Fuqua filed a second complaint with OSHA on December 22, 2013, which is the complaint that is currently before the Board. This complaint was captioned, “Kurt Fuqua v. Amanda E. Inskeep, Thomas W. Soseman, SVOX AG. (Complaint 2). OSHA dismissed Complaint 2 and Fuqua requested a hearing before an Administrative Law Judge. ALJ Linda S. Chapman issued a Recommended Order of Dismissal on June 4, 2014, noting that Fuqua’s claims in complaint 2 were “nothing but an updated version of the claims that were dismissed” in Complaint 1. D. & O. at 7. The ALJ found that Fuqua brought the claims against Respondents in bad faith and ordered Fuqua to pay Respondents \$1,000.00 in attorney’s fees, pursuant to 29 C.F.R. § 1980.109(2). 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 (SVOX) and wanted to remove these parties from Complaint 1. Respondents in Complaint 1 filed a “Notice of Filing of Suit in Federal District Court Depriving the Board of Jurisdiction,” and argued that when Fuqua filed suit in district court, it deprived the Board of jurisdiction over both of the complaints.<sup>3</sup>

The Board issued an order to show cause why both complaints should not be dismissed for lack of jurisdiction. After considering the arguments regarding Complaint 1, the Board held that pursuant to SOX section 1514(b)(1)(B), Fuqua had filed a complaint for de novo review in district court and that court therefore had complete jurisdiction of that action and the Board had none. Accordingly, the Board closed Complaint 1, ARB No. 14-014. The Board left for future consideration by a three-judge panel the issue of whether Fuqua’s district court complaint also transferred jurisdiction of Complaint 2 to the district court.<sup>4</sup> We consider that issue now.

### *Complaint 2*

In the show cause order, the Board ordered Fuqua to show cause why the Board should not dismiss both of his complaints pursuant to 18 U.S.C.A. § 1514A(b)(1)(B). Section 1514(b)(1)(B) permits a party to file a claim with a federal district court, upon satisfying a few

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<sup>2</sup> Fuqua filed a “Second Amended Complaint” with an identical caption (except that Stermetz’s first name was listed as Eugen) on May 30, 2013.

<sup>3</sup> 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).

<sup>4</sup> The Board’s decision in ARB No. 14-014, Complaint 1 was decided by a two-judge panel.

minimal conditions, and remove it from DOL's jurisdiction.<sup>5</sup> Both parties responded. Regarding Complaint 2 (ARB No. 14-069), Fuqua argued that Complaint 2 is based upon a separate claim from the one giving rise to Complaint 1; therefore, it should not be dismissed. Respondents replied that the federal district court complaint encompassed both OSHA complaints (Complaint 1 and Complaint 2) and argued that the two OSHA complaints were "based on the same or overlapping facts."<sup>6</sup> Accordingly, they argued that the Board must dismiss both appeals because the complaints upon which they were based were proceeding de novo in federal district court.

The ALJ set forth Fuqua's claims in Complaint 2 as follows: (1) on July 3, 2013, Respondents falsely denied the validity of Fuqua's claim for owed wages in a written statement to DOL; (2) on July 3, 2013, Respondents Amanda Inskeep (Nuance's attorney in the first action) and SVOX filed an arbitration brief with the American Arbitration Association (AAA); (3) Inskeep and SVOX continued to communicate with the AAA in violation of stay orders; (4) on October 29, 2013, Soseman (an attorney SVOX retained to prepare an employment contract for its employees, including Fuqua) falsely denied that SVOX owed Fuqua wages; and (5) on September 27, 2013, Inskeep and SVOX falsely denied that SVOX owed Fuqua wages. D. & O. at 5-6. The ALJ found that "Fuqua's allegations in this claim are essentially the same as his allegations in his November 16, 2012 claim." *Id.* at 5. As the ALJ described, the claims in this case "are nothing but an updated version of the claims that were dismissed by Judge Purcell in his November 27, 2013 Order," most likely in an attempt by Fuqua to make his complaint timely. *Id.* at 6, 7.

We agree with the ALJ that Complaint 1 and 2 assert the same claims. Fuqua tries to create a "new claim" by objecting to the Respondents' denial of liability in Complaint 1. It would be absurd to treat Complaint 2 as a separate claim solely because Respondents denied liability in Complaint 1.<sup>7</sup> In both complaints Fuqua has in essence been fighting about back wages that he believes his employer owes him. The remedies requested in both were reinstatement, back pay, and fees and costs.<sup>8</sup> In both cases Fuqua argues that Respondents harassed him through their actions to compel arbitration. Asserting in Complaint 2 that Respondents "falsely deny" his wage claims is still a claim for the same back wages requested in Complaint 1. Additionally, while Fuqua has added Inskeep as a party in Complaint 2, again, this

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<sup>5</sup> See also *Stone v. Duke Energy Corp.*, 432 F.3d 320, 322-23 (4th Cir. 2005) (holding that when SOX plaintiff "filed his first complaint in federal court" pursuant to Section 1514A(b)(1)(B), "jurisdiction became lodged in the district court, depriving the ALJ of jurisdiction . . .").

<sup>6</sup> Reply to Response to Order to Show Cause at 4.

<sup>7</sup> See § 8:51. Employers' actions in handling discrimination claims, 1 Emp. Discrim. Coord. Analysis of Federal Law § 8:51, ("Reasonable steps taken by an employer to meet its needs in handling a claim of discrimination do not constitute unlawful retaliation against an employee or applicant.").

<sup>8</sup> See Complaint 1 (Nov. 16, 2012), Resp. App. Ex. B; Complaint 2 (Dec. 22, 2013).

is still about Fuqua's continuing claim for back wages and his challenge to SVOX's defense of itself. We do not see this as a claim separate from the case Fuqua removed to federal court. Consequently, we do not have jurisdiction over this claim.

Furthermore, because Fuqua informed the Board on June 1, 2013, that he removed Complaint 1 to federal court, DOL lost jurisdiction of Complaint 2 before the ALJ entered an order for sanctions on June 4, 2013. Therefore, out of caution in this case, we vacate the ALJ's sanctions solely on the grounds that DOL had lost jurisdiction over the claim. To clarify further, we have not determined whether or not the ALJ abused her discretion in awarding sanctions.

### **CONCLUSION**

The Board does not have jurisdiction over Fuqua's complaint as he filed in district court. Accordingly, we **DISMISS** this matter and **VACATE** the ALJ's award of sanctions.

**SO ORDERED.**

**LUIS A. CORCHADO**  
**Administrative Appeals Judge**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**JOANNE ROYCE**  
**Administrative Appeals Judge**