



In the Matter of:

JASON KLEINMAN,

ARB CASE NO. 15-015

COMPLAINANT,

ALJ CASE NO. 2014-SOX-022

v.

DATE: November 24, 2015

CBC COMPANIES, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Jason Kleinman, Esq.; *pro se*, Dublin, Ohio

For the Respondent:

Mark A. Knueve, Esq. and Michael J. Shoenfelt, Esq.; *Vorys, Sater, Seymour and Pease LLP*; Columbus, Ohio

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*; and Joanne Royce, *Administrative Appeals Judge*

FINAL DECISION AND ORDER

Complainant Jason Kleinman filed a complaint on March 1, 2014, with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that his former employer, CBC Companies, Inc., retaliated against him in violation of the

employee protection provisions of the Sarbanes-Oxley Act of 2002 (SOX)¹ by interfering with his job opportunities in 2010, 2011, and 2012.² OSHA found that Kleinman failed to file a timely complaint because he did not file it within 180 days of the date on which the alleged violations occurred.³

Kleinman requested a hearing before a Department of Labor Administrative Law Judge (ALJ).⁴ Respondent filed a Motion for Summary Disposition and Attorney's Fees. The ALJ granted Respondent's Motion for Summary Disposition finding that Kleinman's complaint was not timely filed, but denied its Motion for Attorney's Fees. Complainant petitioned the Administrative Review Board to review the ALJ's D. & O.⁵ For the reasons stated, the Board summarily affirms the D. & O.

In summarily affirming, we limit our discussion to the most critical points. A SOX complaint is timely if it is filed within 180 days of the date on which the employer took adverse action,⁶ unless equitable considerations dictate otherwise.⁷ Kleinman filed his complaint on March 1, 2014. Accordingly, to be timely the adverse action complained of would have had to have occurred on or after September 2, 2013. In his OSHA complaint, Kleinman stated that Respondent took adverse action against him in

¹ 18 U.S.C.A. § 1514A (Thomson/West Supp. 2015). SOX's implementing regulations are found at 29 C.F.R. Part 1980 (2015).

² *Kleinman v. CBC Companies, Inc.*, ALJ No. 2014-SOX-022, slip op. at 1 (Nov. 19, 2014) (D. & O.).

³ D. & O. at 3.

⁴ See 29 C.F.R. § 1980.106.

⁵ 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).

⁶ 29 C.F.R. § 1980.106.

⁷ In determining whether the Board should equitably modify a statute of limitations, we have recognized four principal situations in which equitable modification may apply: (1) when the defendant has actively misled the plaintiff regarding the cause of action; (2) when the plaintiff has in some extraordinary way been prevented from filing his action; (3) when the plaintiff has raised the precise statutory claim in issue but has done so in the wrong forum; and (4) where the employer's own acts or omissions have lulled the plaintiff into foregoing prompt attempts to vindicate his or her rights. *Turin v. Amtrust Fin. Servs., Inc.*, ARB No. 11-062, ALJ No. 2010-SOX-018, slip op. at 8 (ARB Mar. 29, 2013).

the summer of 2010, October 2011, and the summer of 2012. None of these alleged adverse actions occurred on or after September 2, 2013.⁸

In support of his argument before the ALJ that his complaint was nevertheless timely filed, Kleinman asserted that the last date he became aware of retaliatory action against him was September 1, 2013, when he learned that his computer had been hacked and infected with malware, and that his passwords could have been stolen.⁹ Complainant also contended that The Law Offices of Cara Davis and Experis enforced non-compete agreements against him, with the most recent action taken against him in 2014, although he provided no specific dates for these alleged actions.

The ALJ found that Kleinman had failed to raise any genuine issue of material fact as to whether he filed a timely complaint. The ALJ noted that a complaint based upon the alleged adverse actions in 2010, 2011, and 2012 was “unambiguously untimely, falling well outside the 180-day statute of limitations for SOX claims.”¹⁰ He found that Kleinman proffered no evidence that Respondent had hacked into his computer, infected it with malware, or stolen his passwords,¹¹ or that CBC had enforced non-compete contracts against him or had any ties to the alleged actions of The Law Office of Cara Davis or Experis.¹² We have reviewed the record and Kleinman’s pleadings and find no basis upon which to disturb the ALJ’s conclusion.

The ALJ also considered whether Kleinman was entitled to equitable tolling of the limitations period.¹³ The ALJ found that because Kleinman is an attorney, his lack of knowledge of the SOX filing requirements was not reasonable and did not provide a basis for equitable tolling.¹⁴ He also determined that there was no evidence that CBC misled Kleinman as to the nature of his rights under SOX or prevented him from asserting his rights in any way. The ALJ determined that although Kleinman had attempted to file a complaint with the EEOC in March 2013, Kleinman did not provide the ALJ with a copy of the complaint and thus failed to establish that he filed his SOX complaint in the wrong forum. Thus, the ALJ found that Kleinman failed to raise a genuine issue of material fact that would entitle him to an equitable tolling of the limitations period. Again, we have

⁸ D. & O. at 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 4.

¹² *Id.*

¹³ *Id.* at 4-5.

¹⁴ *Id.*

reviewed the record and Kleinman's pleadings and find no basis to overturn the ALJ's determination.

Accordingly, finding no reason to depart from the ALJ's fully considered and cogently reasoned decision, we **AFFIRM** the Decision and Order and deny Kleinman's appeal.

SO ORDERED.

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge