



In the Matter of:

**GERALD R. BROOKMAN,
COMPLAINANT,**

ARB CASE NO. 07-074

ALJ CASE NO. 2006-SOX-036

DATE: July 23, 2008

v.

**LEVI STRAUSS & COMPANY,
RESPONDENT.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Gerald R. Brookman, *pro se*, Euless, Texas

For the Respondent:

Michael W. Foster, Esq., *Foster & Associates*, Oakland, California

FINAL DECISION AND ORDER

Complainant Gerald R. Brookman filed a complaint with the United States Department of Labor alleging that Respondent Levi Strauss & Co. (Levi Strauss)¹ had violated the employee protection provision of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002² (“SOX”

¹ We henceforth refer to Levi Strauss and its employees, unless specifically named, as Levi Strauss.

² 18 U.S.C.A. § 1514A (West 2008).

or “the Act”) and its implementing regulations.³ On August 18, 2006, a Department of Labor Administrative Law Judge (ALJ) partially granted Levi Strauss’s Motion to Dismiss, finding that Brookman failed to show that there was a genuine issue of material fact pertaining to the issues whether Brookman’s July 19, 2005 letter was protected activity under SOX and whether the placement of Brookman on a performance improvement plan was an adverse employment action. Following a hearing on the remaining issues, the ALJ concluded in his [Recommended] Decision and Order (R. D. & O.) that Levi Strauss had not violated SOX and dismissed the complaint. Brookman appealed to the Administrative Review Board (ARB). Upon review, we concur with the ALJ and accept his recommendation to deny the complaint.

BACKGROUND

Brookman began working for Levi Strauss in January 2005 as a database systems engineer.⁴ His duties included providing troubleshooting assistance to internal customers and installing system upgrades.

On June 17, 2005, Brookman brought his dog to Levi Strauss’s Westlake, Texas office and was asked to remove it from company premises.⁵ After learning that Brookman had alleged he was disabled and his dog was a service animal, Brookman’s supervisor, Delana Nading, informed him that if he provided the necessary documentation proving his need for a service animal, accommodations would be made.⁶

On July 19, 2005, Brookman wrote to Peter Goldsmith, the Company’s outside counsel, complaining that Levi Strauss was violating its Worldwide Code of Conduct and the Americans with Disabilities Act (ADA) by requiring employees who needed service animals to work from home.⁷ Tracy Preston, associate general counsel for Levi Strauss, investigated the allegation, replied to Brookman that no violation of the Code of Conduct or the ADA had occurred, and reiterated that accommodations would be provided for him if he produced the necessary documentation.⁸

³ 29 C.F.R. Part 1980 (2007).

⁴ Transcript (Tr.) at 135.

⁵ Respondent’s Exhibit (RX) 2.

⁶ RX 1, Ex. B.

⁷ RX 7.

⁸ RX 1, Ex. B.

Nearly a month later, on August 25, 2005, Nading assigned Brookman the task of installing, a program necessary for SOX compliance, a DB2 log analysis tool, a task which he had indicated on his résumé he was capable of performing and had performed previously.⁹ After conversations with Brookman's coworkers, Nading became convinced that Brookman was incapable of completing the assignment and she assigned another engineer to perform the installation.¹⁰

On August 29, 2005, Nading informed her manager, Kal Majmundar, that she wished to place Brookman on a performance improvement plan (PIP). Nading and David Gonzalez, a Human Resources representative, developed the PIP, which outlined specific goals for Brookman to accomplish and could potentially result in termination if he failed to meet those goals. They delivered it to Brookman on September 8, 2005.¹¹ The PIP covered a forty-five day period and required Brookman to outline a step-by-step procedure for installing a DB2 tool suite, to have that procedure validated by his superiors, and then to execute the outlined installation.¹²

Brookman filed an internal report with Levi Strauss's Ethics and Compliance Reportline on September 19, 2005, claiming that Nading, Majmundar, and Gonzalez, were retaliating against him because he filed an Equal Employment Opportunity Commission (EEOC) complaint and cooperated with the Securities and Exchange Commission (SEC) concerning SOX violations.¹³

On September 20, 2005, Brookman e-mailed Nading to inform her that he was unable to complete the step-by-step installation procedure because he lacked the information and assistance necessary to do so. But Nading determined that, given the expertise listed on his résumé, Brookman should have been able to complete the assignment with the information provided.¹⁴ The following day, Nading met with Brookman, who admitted that he had been given sufficient information to complete the assignment and informed Nading that she would receive the procedure that same day. After Brookman gave Nading the procedure, she asked Stephen Douglas, technical lead of the database administration group, to validate it. Douglas found the procedure was incomplete and incorrect, that in direct violation of instructions Brookman had already

⁹ R. D. & O. at 10.

¹⁰ *Id.*

¹¹ *Id.* at 11.

¹² *Id.*

¹³ *Id.* at 4. Brookman did not specify the nature of the SOX violations.

¹⁴ *Id.* at 11.

installed the tool suite without validation of his written procedure, and had done so incorrectly.¹⁵

Nading decided at this point to fire Brookman. On September 27, 2005, she met with Majmudar, who concurred in her decision, and then contacted Gonzalez. Gonzalez approved the termination, but recommended retaining Brookman until the end of the PIP period.¹⁶

On September 29, 2005, Michael Foster, counsel for Levi Strauss in these proceedings, interviewed Brookman regarding his September 19 internal complaint.¹⁷ Based on his interview of Brookman and his investigation into the allegations, Foster determined that Brookman's allegations were unfounded and so notified him in an October 13, 2005 letter.¹⁸

On October 3, 2005, Brookman filed his first complaint with the Occupational Safety and Health Administration (OSHA), contending that Levi Strauss was violating SOX Section 802(a). This complaint was later supplemented when OSHA investigator, Anthony Incristi, interviewed Brookman and Brookman alleged that Levi Strauss's purported failure to comply with the ADA, while certifying that it had, was fraud.¹⁹

On October 4, 2005, the SEC received an undated letter from Brookman stating that Levi Strauss was violating the ADA, a letter that Brookman claims to have mailed in August 2005.²⁰ The SEC responded on October 7, 2005, that his complaint fell outside the SEC's jurisdiction.²¹

Nading terminated Brookman's employment on October 21, 2005, the end of the forty-five day PIP period.²² That same day, Brookman notified Incristi of his

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ RX 3.

¹⁸ Complainant's Exhibit (CX) 1.

¹⁹ RX 3, Ex. G.

²⁰ R. D. & O. at 14.

²¹ *Id.*

²² *Id.* at 13.

termination.²³ OSHA determined that Brookman’s complaint had no merit. He subsequently requested a hearing before an ALJ on December 22, 2005.

Levi Strauss filed a Motion to Dismiss on June 22, 2006, arguing that Brookman failed to comply with the ALJ’s order to file a complaint, which specifically identified the alleged protected activities and adverse actions; that Levi Strauss had no knowledge of any SOX complaint prior to initiating disciplinary proceedings against him; and that the PIP and the eventual termination were based upon legitimate, non-discriminatory business reasons.²⁴ When Levi Strauss filed its motion, Brookman was no longer represented by counsel. The ALJ, recognizing that he had not offered Brookman the same level of guidance that he would normally offer to a pro se complainant, rejected Levi Strauss’s motion to dismiss for Brookman’s failure to file a formal complaint.²⁵ The ALJ instead restricted the hearing to the allegations contained in Brookman’s October 3, 2005 OSHA complaint and his subsequent objections to OSHA’s findings.²⁶

The ALJ determined that the July 19, 2005 letter Brookman wrote was unrelated to SOX and was not a protected activity. The ALJ also found that the PIP was not an adverse employment action prohibited by SOX because Levi Strauss could not have known of any alleged protected activities when it placed Brookman on the PIP and therefore it was not retaliatory in nature.²⁷ The ALJ concluded that there was a genuine issue of material fact as to whether Levi Strauss knew of an August 2005 SEC complaint or the September 29, 2005 internal complaint at the time it terminated Brookman.²⁸

After a hearing on November 14, 2006, the ALJ found that Levi Strauss had not violated SOX and recommended dismissing the complaint.²⁹ Brookman filed a petition requesting that the Administrative Review Board review the ALJ’s R. D. & O.³⁰ In his petition, Brookman objected to all “findings, conclusions, and orders contained in ALJ Patrick M. Rosenow’s April 27, 2007 ‘Decision and Order.’”³¹ He also claimed that the

²³ *Id.*

²⁴ Respondent’s Motion for Summary Judgment.

²⁵ Ruling on Motion to Dismiss (R. M. D.) at 10.

²⁶ R. M. D. at 2.

²⁷ R. M. D. at 9.

²⁸ *Id.*

²⁹ R. D. & O. at 16.

³⁰ *See* 29 C.F.R. § 1980.110(a).

³¹ Complainant’s Petition for Review.

ALJ had erred in not considering Brookman's July 19, 2005 letter, alleged that the September 29, 2005 interview with Foster was whistleblower retaliation, and that Levi Strauss had engaged in a pattern of whistleblower retaliation.³²

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the Administrative Review Board to issue final agency decisions under SOX.³³ Brookman has appealed both the ALJ's grant of summary judgment and his recommended decision on the merits, which is based upon findings of fact and conclusions of law. Accordingly, we employ two standards of review in our consideration of this case.

We review a recommended decision granting summary decision *de novo*. That is, the standard the ALJ applies, also governs our review.³⁴ The standard for granting summary decision is essentially the same as that found in the rule governing summary judgment in the federal courts.³⁵ Accordingly, summary decision is appropriate if there is no genuine issue of material fact. The determination whether facts are material is based on the substantive law upon which each claim is based.³⁶ A genuine issue of material fact is one, the resolution of which "could establish an element of a claim or defense and, therefore, affect the outcome of the action."³⁷

We view the evidence in the light most favorable to the non-moving party and then determine whether there are any genuine issues of material fact and whether the ALJ correctly applied the relevant law.³⁸ "To prevail on a motion for summary judgment, the moving party must show that the nonmoving party 'fail[ed] to make a showing sufficient

³² *Id.*

³³ Secretary's Order No. 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1980.110(a).

³⁴ 29 C.F.R. § 18.40 (2007).

³⁵ Fed. R. Civ. P. 56.

³⁶ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

³⁷ *Bobreski v. United States EPA*, 284 F. Supp. 2d 67, 72-73 (D.D.C. 2003).

³⁸ *Lee v. Schneider Nat'l, Inc.*, ARB No. 02-102, ALJ No. 2002-STA-025, slip op. at 2 (ARB Aug. 28, 2003); *Bushway v. Yellow Freight, Inc.*, ARB No. 01-018, ALJ No. 2000-STA-052, slip op. at 2 (ARB Dec. 13, 2002).

to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial.”³⁹ Accordingly, a moving party may prevail by pointing to the “absence of evidence proffered by the nonmoving party.”⁴⁰ Furthermore, a party opposing a motion for summary decision “may not rest upon the mere allegations or denials of [a] pleading. [The response] must set forth specific facts showing that there is a genuine issue of fact for the hearing.”⁴¹

The Board reviews an ALJ's findings of fact using the substantial evidence standard.⁴² Substantial evidence is that which is “more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”⁴³ We must uphold an ALJ's factual finding that is supported by substantial evidence even if there is also substantial evidence for the other party and even if we “would justifiably have made a different choice had the matter been before us *de novo*.”⁴⁴

In reviewing the ALJ's conclusions of law, the Board, as the Secretary's designee, acts with “all the powers [the Secretary] would have in making the initial decision....”⁴⁵ Therefore, the Board reviews an ALJ's conclusions of law *de novo*.⁴⁶

DISCUSSION

I. Brookman's Objection to All of the ALJ's Findings and Conclusions

Pursuant to 29 C.F.R. 1980.110(a), a petition for review “must specifically identify the findings, conclusions or orders to which exception is taken. Any exception

³⁹ *Bobreski*, 284 F. Supp. 2d at 73 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

⁴⁰ *Bobreski*, 284 F. Supp. 2d at 73.

⁴¹ 29 C.F.R. § 18.40(c). See *Webb v. Carolina Power & Light Co.*, ALJ No. 1993-ERA-042, slip op. at 4-6 (Sec'y July 17, 1995).

⁴² See 29 C.F.R. § 1980.110(b).

⁴³ *Clean Harbors Env'tl. Servs., Inc. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998), (quoting *Richardson v. Perales*, 402 U.S. 289, 401 (1971)).

⁴⁴ *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951).

⁴⁵ 5 U.S.C.A. § 557(b) (West 2008).

⁴⁶ See *Getman v. Sw. Secs., Inc.*, ARB No. 04-059, ALJ No. 2003-SOX-8, slip op. at 7 (ARB July 29, 2005).

not specifically urged ordinarily will be deemed to have been waived by the parties.” Brookman’s blanket objection to all of the ALJ’s findings and conclusions clearly fails to satisfy the specificity requirement for a petition to the Board for review. Nevertheless, regardless of Brookman’s failure to properly invoke our review, we concur with the findings, conclusions, and orders contained in the ALJ’s R. D. & O.

SOX actions are governed by the burdens of proof expounded at 49 U.S.C.A. § 42121(b), the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.⁴⁷ Accordingly, to prevail, a SOX complainant must prove by a preponderance of the evidence that: (1) he engaged in a protected activity or conduct; (2) the employer knew that he engaged in the protected activity; (3) he suffered an unfavorable personnel action; and (4) the protected activity was a contributing factor in the unfavorable action.⁴⁸ If the complainant succeeds in establishing these elements, then the respondent may avoid liability by demonstrating by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the protected activity.⁴⁹

The ALJ found that Brookman’s September 19 complaint alleged that his superiors retaliated against him because he had filed an EEOC complaint, he had cooperated with the SEC concerning SOX violations, and because he had experienced installation problems with SOX remediation software. None of these activities, the ALJ held, constituted SOX-protected whistleblower activity.⁵⁰ The EEOC complaint and the installation problems fell outside the scope of SOX-covered activity, since Levi Strauss’s alleged misconduct was not among the prohibited behaviors enumerated in the Act. Brookman’s alleged cooperation with the SEC, the ALJ concluded, was too vague to constitute a protected activity since it did not identify Levi Strauss’s alleged misconduct. Also, the ALJ elaborated that if the SEC cooperation was to be viewed as referring to the complaint to the SEC regarding Levi Strauss’s failure to comply with the ADA, reporting

⁴⁷ 18 U.S.C.A. § 1514A(b)(2)(C) (West 2008).

⁴⁸ See 49 U.S.C.A. § 42121(b)(2)(B)(iii). See also *Getman*, slip op. at 8; *Peck v. Safe Air Int’l, Inc. d/b/a Island Express*, ARB No. 02-028, ALJ No. 2001-AIR-003, slip op. at 6-10 (ARB Jan. 30, 2004).

⁴⁹ See 49 U.S.C.A. § 42121(b)(2)(B)(iv). See also *Getman*, slip op. at 8; *Peck*, slip op. at 10.

⁵⁰ The SOX prohibits an employer from retaliating against an employee who “provide[s] information” to “a Federal regulatory ... agency” or “person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct)” “which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.” 18 U.S.C.A. § 1514A.

it was still not protected activity since failing to comply with the ADA was not an activity SOX prohibits.⁵¹

Similarly, the ALJ found that Brookman's letter to the SEC was not protected activity in that it did not allege conduct by Levi Strauss that fell within SOX's listed categories of fraud or securities violations.⁵² We agree with the ALJ's conclusion that neither the September 19, 2005 internal complaint nor the letter to the SEC qualifies as protected activity under SOX.⁵³

The ALJ also found that Brookman had failed to demonstrate that Levi Strauss knew of his alleged protected activities prior to the decision to terminate his employment. The decision to terminate Brookman was made on September 27, 2005. Brookman's supervisor and the Human Resources representative involved in the decision to terminate each testified that at no time prior to their decision were they aware of the September 19 internal complaint or the letter to the SEC. In fact, Levi Strauss's senior global litigation counsel testified that not until 2006 did Levi Strauss see any documents related to Brookman's SEC allegations.⁵⁴ From the testimony and exhibits in the record, it is clear that there is substantial evidence supporting the ALJ's conclusion that Levi Strauss lacked knowledge of Brookman's alleged protected activities prior to terminating his employment.

Finally, the ALJ found that even if Levi Strauss knew of the SEC letter or the internal complaint, those communications were not a contributing factor in the decision to terminate Brookman. The ALJ concluded from the testimony of all the parties involved in the decision that only matters related to job performance were ever discussed in relation to the PIP or the termination.⁵⁵ We find that the ALJ's determinations that Brookman was terminated because he was incapable of performing the software installation tasks required for his job, and that neither his internal complaint nor his SEC letter were contributing factors in his termination, are supported by substantial evidence.

⁵¹ R. D. & O. at 14-15.

⁵² *Id.* at 15.

⁵³ *See Harvey v. Home Depot, U.S.A., Inc.*, ARB Nos. 04-114, 04-115; ALJ Nos. 2004-SOX-020, 2004-SOX-036, slip op. at 13-16 (ARB June 2, 2006) (holding that to be protected by SOX the employee's complaint must be directly related to fraud or securities violations); *Getman*, slip op. at 9-10 (requiring that a complaint be specific enough to provide information regarding fraud against shareholders or some other securities violation).

⁵⁴ *Id.*

⁵⁵ *Id.* at 16.

II. ALJ's Summary Decision Concerning Complainant's July 19 Complaint

Brookman claimed in his petition for review that the ALJ erred by not considering his July 19, 2005 letter of complaint. Brookman contends that the ALJ erred because the letter dealt not merely with the removal of his dog, but rather with a company-wide policy of discriminating against handicapped employees.⁵⁶ Although Brookman argues that the ALJ never considered the July 19 letter, the ALJ, in fact, considered and dismissed this letter in his Ruling on the Respondent's Motion to Dismiss. As such, we consider the issue of whether or not the ALJ erred in dismissing the July 19 letter de novo.

Brookman has repeated in his petition for review and brief to the Board essentially the same arguments he made to the ALJ in response to the Respondent's Motion to Dismiss. While Brookman contends that the ALJ should have considered his July 19 letter a protected activity because it was a report to Levi Strauss's audit committee, he fails to demonstrate in either his petition for review or his brief to the Board how his letter pertains to any SOX violation. Even if we accept as true that the July 19 letter was in fact a report to Levi Strauss's audit committee⁵⁷ regarding a company policy of discrimination against handicapped employees, such a report in no way qualifies as protected activity since it does not allege any of the enumerated fraud or securities violations prohibited under the Act.⁵⁸

Brookman attempts to support his allegation by citing to remarks Foster allegedly uttered during their September 29, 2005 interview, specifically that Foster had never seen a handicapped employee at Levi Strauss's San Francisco or Westlake, Texas offices.⁵⁹ Any statements Foster made on September 29 are irrelevant to the issue whether the July 19 letter was a protected activity. Foster's purported remarks, which occurred more than two months after Brookman filed his complaint, fail to solve the basic problem with Brookman's complaint, i.e., that the July 19 letter does not qualify as protected activity under SOX.

⁵⁶ Complainant's Petition for Review at 1-2.

⁵⁷ While Brookman contends his letter was a report to the Company's audit committee, this assertion is contested by Levi Strauss. It is unclear from the record whether his letter was anything more than a complaint regarding the alleged violation of the Company's Code of Conduct on June 17, 2005. In any event, we need not decide this question to determine if the ALJ erred in his R. M. D.

⁵⁸ See *Nixon v. Stewart & Stevenson Services, Inc.*, ARB No. 05-066, ALJ No. 2005-SOX-001, slip op. at 10-11 (ARB Sept. 28, 2007) (requiring an employee to communicate that the employer's conduct constitutes one of the enumerated violations in order to be protected); *Harvey*, slip op. at 13-16 (holding that to be protected by SOX, the employee's complaint must be directly related to fraud or securities violations).

⁵⁹ Complainant's Petition for Review at 2.

Brookman further argues that under SOX he is only required to demonstrate that he reasonably believed that an actual SOX violation had occurred.⁶⁰ However, Brookman fails to explain why an objectively reasonable employee in his situation would view a complaint regarding a company's discrimination against disabled employees as a violation of the fraud or securities violation provisions of SOX. Therefore, we agree with the ALJ's conclusion that there is no genuine issue of material fact as to whether the July 19, 2005 letter was a protected activity under SOX. As such, we hold that the ALJ correctly dismissed Brookman's July 19, 2005 letter from consideration as a potential protected communication.

III. Foster's September 29, 2005 Interview of Brookman

Brookman next alleges in his petition that his interview with Foster on September 29, 2005, and "all subsequent acts" were whistleblower retaliation, and that this was admitted by Levi Strauss's employees.⁶¹ Brookman does not provide evidence to support this claim, nor does he demonstrate how the "interrogation" Foster ostensibly conducted constitutes an adverse action.⁶² In fact, the record indicates that the meeting between Foster and Brookman was an investigation into the allegations Brookman made in his September 19, 2005 internal complaint, not a retaliatory action against the Complainant.⁶³

Furthermore, the ALJ, after considering Levi Strauss's Motion to Dismiss, concluded that because Brookman had failed to file a formal complaint specifying protected activities and adverse actions, he would be limited to those listed in his OSHA complaint of October 4, 2005, and subsequent objections to the Secretary's findings. Brookman agreed to the limitation.⁶⁴ Nowhere in his OSHA complaint or objections does Brookman allege that an adverse action occurred when he met with Foster on September 29, 2005. In fact, the OSHA complaint does not reference the meeting at all,

⁶⁰ Complainant's Brief at 3.

⁶¹ Complainant's Petition for Review at 2.

⁶² See 18 U.S.C.A. § 1514A ("No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), or any officer, employee, contractor, subcontractor, or agent of such company, **may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee... .**")(emphasis added).

⁶³ RX 3.

⁶⁴ R. M. D. at 2.

and his objections to the Secretary's findings merely note that he met with Foster on that date and was interviewed, not interrogated, for four continuous hours.⁶⁵

We conclude that the alleged September 29, 2005 "interrogation" does not constitute an adverse action against Brookman and given the ALJ's limitation of the allegations he would consider in response to Brookman's failure to file a formal complaint, that the ALJ acted properly in not addressing it in his R. D. & O.

IV. Levi Strauss's Alleged Pattern of Whistleblower Retaliation

Brookman's final claim in his petition for review alleges that Levi Strauss has engaged in previous whistleblower retaliation against other employees that is similar to that which he alleges. In support of this allegation Brookman quotes at length from a complaint filed by two former Levi Strauss employees, Robert Schmidt and Thomas Walsh, filed in the United States District Court for the Northern District of California. Brookman's attempt to analogize his circumstances to allegations of other parties does not raise specific objections to the ALJ's R. D. & O., nor does it allege any protected activity or adverse actions in Brookman's case. Therefore we need not consider this argument further.

CONCLUSION

Having examined all evidence and briefs presented, we hold that the ALJ properly concluded that Brookman failed to raise an issue of material fact regarding whether Brookman's July 19 letter constituted protected activity. We also agree with the ALJ that Brookman did not engage in activity protected by the Act, that Levi Strauss lacked any knowledge of Brookman's alleged protected activities, and that Brookman's alleged protected activities played no role in Levi Strauss's decision to terminate his employment. Since Brookman has failed to establish essential elements of his case, we **DENY** his complaint.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

⁶⁵ Complainant's Objections to Secretary's Findings and Preliminary Order.