

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 29 February 2008

CASE NO.: 2007-SOX-00026

In the Matter of

LILLIAN B. CALDWELL,
Complainant,

v.

**AIRGATE INTERNATIONAL CORPORATION;
PACIFIC CMA INC.;;
FRANK ZAMBUTO;
KILE PAWLAK;
STANLEY LEE;
KENNETH YEUNG;
SCOTT TURNER;
ALFRED LAM,**
Respondents.

ORDER DISMISSING COMPLAINT

The instant matter arises under section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, title VIII of the Sarbanes-Oxley Act of 2002, codified at 18 U.S.C. §1514A (“the Act”). The Act grants certain employees the right to bring a “civil action to protect against retaliation in fraud cases” under section 806. Congress has stated that the Act shall be governed by 49 U.S.C. §42121(b) and the procedural regulations governing the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. 18 U.S.C. §1514A(b)(2)(B). Accordingly, the Office of Administrative Law Judges for the U.S. Department of Labor (“OALJ”) has jurisdiction over such complaints.

The United States Department of Labor has promulgated regulations that govern the procedure for processing such complaints. Pursuant to 29 C.F.R. §1980.111(a), where a “complaint is withdrawn due to settlement, the settlement will be approved in accordance with [29 C.F.R. §1980.111(d)].” That paragraph provides that where the case is pending before an administrative law judge, the settlement must be approved by the administrative law judge. 29 C.F.R. §1980.111(d).

The parties advised me that they had settled the instant matter with the assistance of a settlement judge assigned by the Chief Judge, OALJ. The parties were subsequently advised by me in a telephone conference that the complaint could not be withdrawn without my approval of the settlement, pursuant to 29 C.F.R. §§1980.111(a) and (d). In a telephone conversation on

January 9, 2008, a member of my staff reminded the parties that the settlement stipulations had not been submitted for my approval. When I had not received the parties' stipulated agreement as of January 29, 2008, I issued an Order to the parties directing them to submit the stipulations within ten days of that Order, or otherwise show cause why the complaint should not be dismissed.

As of the date of this Order, the parties have not submitted the agreement or otherwise shown cause why the complaint should not be dismissed. Pursuant to 29 C.F.R. §18.39(b), I may dismiss a matter for abandonment. I construe the actions of the parties in this matter to be tantamount to failing to appear at a hearing. This matter was referred to OALJ on February 20, 2007. At the request of the parties I postponed scheduled hearing dates several times, and encouraged their participation in settlement discussions. During a telephone conference, the parties made it clear that they desired protection from disclosure of their agreement, and they asked to be permitted to withdraw their claim. I explained during the telephone conference, and again in my Order of January 29, 2008, that such action was contrary to the regulations, which require me to approve a settlement. 29 C.F.R. §1980.111(a).

Moreover, I find that dismissal is an appropriate sanction for the failure of the parties to comply with my Order to show cause. See, 29 C.F.R. §18.6(d)(2); §§18.29(a)(8) and (9).

Accordingly, the Complainant's objection to the Occupational Safety and Health Administration's determination in her complaint under the Act, and her request for review by OALJ, is hereby DISMISSED.

So ORDERED.

A

Janice K. Bullard
Administrative Law Judge

Cherry Hill, New Jersey