



Issue Date: 10 March 2006

CASE NUMBER 2004-SOX-00071

In the Matter of:

MILTON STATES,
Complainant,

v.

FLUOR CORPORATION,
Respondent.

DECISION AND ORDER GRANTING MOTION TO DISMISS

This proceeding arises under the provisions of section 806 of the Sarbanes-Oxley Act, 18 U.S.C. §1514A, and implementing regulations set forth at 29 C.F.R. Part 1980. In brief, the Complainant alleges that the Respondent violated the Sarbanes-Oxley Act's whistleblower provisions when it terminated his employment on September 6, 2002. On July 27, 2004, the Regional Administrator of the Occupational Safety and Health Administration (OSHA) notified the parties that OSHA's investigation of the allegation had determined that it was without merit. Thereafter, the Complainant filed a timely request for a hearing before an Administrative Law Judge.

On September 14, 2004, the parties were notified that the trial of this matter would commence in Long Beach, California, on November 1, 2004. However, in a letter submitted on October 14, 2004, the Complainant asked that the trial be postponed so that he could have more time in which to find a new attorney. In a response submitted on October 20, 2004, the counsel for the Respondent noted that the Complainant had been represented in this matter until June of 2003 and therefore had already had almost 16 months in which to find another attorney.

In an order issued on October 22, 2004, it was determined that the Complainant's request for a continuance would be granted. However, as a condition of the postponement the Complainant was directed to file written reports every 14 days setting forth precisely what steps he had taken to find a new attorney. After the issuance of that order, the Complainant filed brief, nearly-identical reports approximately every two weeks. However, none of the reports indicated that the Complainant had in fact obtained legal representation. Rather, the reports usually asserted that the Complainant had met with an unidentified attorney, but that the attorney wanted to have another meeting with the Complainant before deciding whether to represent him in this matter. Although the Complainant's reports did not indicate whether he had been meeting with the same attorney or with different attorneys, by the Summer of 2005 it became clear that the Complainant had already been given far more time than would be reasonably necessary to find

an attorney. Accordingly, in a Notice of Trial issued on August, 24, 2005, the parties were informed that the trial of the case would commence on October 31, 2005, and that the trial would proceed as scheduled even if the Complainant had not yet obtained legal representation.

Thereafter, however, both of the parties agreed to participate in settlement negotiations with the assistance of a settlement judge appointed by the Department of Labor's Chief Administrative Law Judge. As a result, the trial that had been scheduled to commence on October 31, 2005 was postponed until the completion of the settlement negotiations. After the parties reported that the settlement discussions had been unsuccessful, they were given a new trial date of March 7, 2006 and new deadlines for the completion of discovery. Both parties thereupon exchanged discovery requests. However, in a letter dated December 7, 2005, the Complainant in effect asked for issuance of an order excusing him from providing responses to various discovery requests seeking information concerning his arrest and incarceration in Amsterdam, Holland, during August of 2002 for an alleged sexual assault on an unnamed woman. In an Order issued on December 21, 2005, the Complainant's request was denied and he was directed to provide full, responsive answers to these and other discovery requests by December 21, 2005.

On January 9, 2006, the Respondent's counsel informed the Complainant that his supplemental responses were inadequate and that the Respondent intended to take the Complainant's deposition on January 16, 2006. However, on January 13, 2006 the Complainant submitted a letter stating that he intended to file his case in a United States District Court pursuant to the provisions of 29 C.F.R. §1980.114 and that he therefore would not be submitting any additional documents to the Respondent. In addition, the Complainant failed to submit a Pre-Trial Statement that was due on January 13, 2006 and also failed to appear for the deposition that had been scheduled for January 16, 2006.

On February 1, 2006, the Respondent filed a Motion to Dismiss Complaint which contended, *inter alia*, that the Complainant's dubious effort to find a new attorney, failure to fully comply with discovery orders, refusal to appear for a deposition, and non-compliance with the January 13, 2006 deadline for filing a Pre-Trial Statement are sufficient in combination to warrant dismissal of his complaint.

Despite the fact that more than two months have elapsed since the Complainant reported that he would be filing a complaint in District Court, no such complaint has apparently been filed. Instead, the Complainant has submitted a series of letters asserting that he is making efforts to file a complaint but has been temporarily delayed. These letters bear a strong resemblance to the claimant's letters concerning his purported attempts to find a new attorney and thus appear to be nothing more than an attempt to use the option of filing in a District Court as a means of evading the deadlines in this proceeding and further delaying the final resolution of this matter. Moreover, although the Sarbanes Oxley Act does give complainants the right to file complaints in District Courts if a case has been pending before the Department of Labor for more than 180 days, nothing in the Act indicates that a mere statement of an intent to file such a complaint suspends the Department of Labor proceeding or in some way excuses a complainant from complying with the procedural orders and deadlines issued by the Department's Administrative Law Judges. Finally, it is also noted the Complainant has failed to meet the

deadline for filing a response to the Respondent's motion to dismiss his complaint. See 29 C.F.R. §18.6(b) (rule allowing 10 days for responding to motions). Accordingly, the Respondent's motion to dismiss the complaint is hereby granted.

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Paul A. Mapes
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This decision shall become the final order of the Secretary of Labor pursuant to 29 C.F.R. §1980.110, unless a petition for review is timely filed with the Administrative Review Board ("Board"), US Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210, and within 30 days of the filing of the petition, the ARB issues an order notifying the parties that the case has been accepted for review. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. **To be effective, a petition must be filed within ten business days of the date of the decision of the administrative law judge.** The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. See 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b), as found in "OSHA, Procedures for the Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002"; Interim Rule, 68 Fed. Reg. 31860 (May 29, 2003).