

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:04CV277-MU

FILED  
CHARLOTTE, N.C.  
2004 DEC -2 PM 3: 02  
U.S. DISTRICT COURT  
W. DIST. OF N.C.

F. BARRON STONE,

Plaintiff,

vs.

DUKE ENERGY CORPORATION,  
DUKE ENERGY BUSINESS SERVICES  
(DEBS),

Defendants.

ORDER

This matter is before the court upon Defendants' Motion to Dismiss. Plaintiff has filed a response in opposition to Defendants' motion and Defendants have filed a Reply. Accordingly, this motion is ripe for disposition.

Plaintiff initiated this action on June 7, 2004, alleging a claim under § 806 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A ("Sarbanes-Oxley"), as well two state law claims. Plaintiff claims he suffered unlawful discrimination and harassment while employed by Defendant Duke Energy because he was a "whistleblower." Plaintiff originally filed a complaint under the Sarbanes-Oxley Act with the Department of Labor ("DOL") on October 30, 2002. The DOL commenced its investigation of Stone's complaint in late November of 2002. The duration of the DOL proceeding was in excess of 180 days. Stone then filed suit in this court under the Sarbanes-Oxley Act on May 21, 2003. (Stone v. Duke Energy Corporation, et al., Civil No. 3:03CV256-MU) ("Stone I"). After the Stone I Complaint was filed in this court, the Administrative Law Judge dismissed Stone's administrative complaint with the DOL. That

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Order was not appealed and became final on July 3, 2003.<sup>1</sup> On February 11, 2004, this court dismissed Stone I for violating Rules 8 and 10 of the Federal Rules of Civil Procedure. Plaintiff initiated the present action by filing a "Restated Complaint" on June 7, 2004, which closely tracks the Complaint filed in Stone I. Defendants filed their Motion to Dismiss arguing, *inter alia*, that this court now lacks subject matter jurisdiction over Plaintiff's Sarbanes-Oxley claims.

Complaints of discharge or other discrimination under section 806 of the Sarbanes-Oxley Act must first be filed with the Secretary of Labor. 18 U.S.C. § 1514(A)(b)(1)(A). A suit under Section 806 may only be filed in a federal district court if the Secretary of Labor has jurisdiction over the case, but does not issue a final decision within 180 days of the filing of the administrative complaint. 18 U.S.C. § 1514(A)(b)(1)(B).<sup>2</sup> This is how this court obtained jurisdiction over Plaintiff's claims in Stone I. Once this court dismissed Stone I, however, it no longer had jurisdiction over Plaintiff's claims. Moreover, the DOL no longer had jurisdiction over Plaintiff's claims after the ALJ issued its order dismissing the administrative complaint and Stone failed to appeal.

Because the Secretary of Labor's final order dismissed Stone's administrative complaint before the present complaint ("Stone II") was filed, the procedures of 18 U.S.C. §

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<sup>1</sup> Under the Sarbanes-Oxley Act, Stone could have appealed this decision to the Court of Appeals within 60 days after the issuance of the final Order. 49 U.S.C. § 42121(b)(4). Instead, Stone decided to pursue his claims in this court in Stone I.

<sup>2</sup> 18 U.S.C. § 1514(A)(b)(1) provides:

A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c) by –  
 (A) filing a complaint with the Secretary of Labor; or  
 (B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint . . . bringing an action at law or equity for *de novo* review in the appropriate district court of the United States, which shall have jurisdiction over such action without regard to the amount in controversy.

18 U.S.C. § 1514(A)(b)(1).

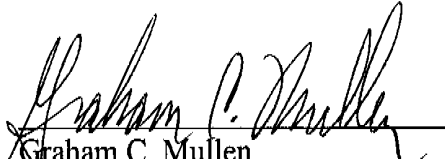
1514A(b)(1)(B) do not apply, and there is no basis for this court to assert jurisdiction in this case.

As the court finds that it lacks subject matter jurisdiction over Plaintiff's Sarbane-Oxley claims,

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss Count I of the Complaint is hereby GRANTED, and Count I is dismissed with prejudice;

IT IS FURTHER ORDERED that the court declines to exercise pendent jurisdiction over Plaintiff's state law claims and those claims are hereby dismissed without prejudice.

This 14 day of December, 2004.

  
Graham C. Mullen  
Chief United States District Judge

United States District Court  
for the  
Western District of North Carolina  
December 2, 2004

\* \* MAILING CERTIFICATE OF CLERK \* \*

Re: 3:04-cv-00277

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Magistrate Judge ( )  
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Atty. for Deft. ( )  
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Court Reporter ( )  
Courtroom Deputy ( )  
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Other \_\_\_\_\_ ( )

Date: 12-2-04

Frank G. Johns, Clerk

By:   
Deputy Clerk