

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 05 June 2006

CASE NO.: 2006-SOX-00026

IN THE MATTER OF:

TORINA A. COLLIS,
Complainant,

v.

BANK OF AMERICA
Respondent.

**ORDER APPROVING COMPLAINANT'S TRANSFER OF THIS COMPLAINT TO
FEDERAL DISTRICT COURT AND TERMINATING JURISDICTION WITH
U.S. DEPARTMENT OF LABOR**

This case is before the U.S. Department of Labor under the employee protection (whistleblower) provisions of the Sarbanes-Oxley Act of 2002 (the "Act" or "SOX"), Public Law 107-204, codified at 18 U.S.C. §1514A. The whistleblower provisions appear at Title VIII of the Act, which is designated as the Corporate and Criminal Fraud Accountability Act of 2002. Any action brought under these statutes is governed by the rules and procedures set forth in 29 C.F.R. Part 1980.

The Complainant, through counsel, by a Notice of Filing Federal Court Complaint, dated May 30, 2006, states that in accordance with Rule 29 C.F.R. § 1980.114, the Complainant gives notice she has filed a complaint in federal court regarding the matter addressed in her complaint to the Secretary. Counsel has attached a copy of the complaint filed on May 26, 2006 in the U.S. District Court, District of Maryland.

The regulation at 29 C.F.R. § 1980.114 states the following:

If the Board has not issued a final decision within 180 days of the filing of the complaint, and there is no showing that there has been delay due to the bad faith of complainant, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States, which will have jurisdiction over such action without regard to the amount in controversy.

The Complainant has shown reasonable diligence in presenting her case and has not caused any delay in bad faith. The Complainant provided notice more than 15 days before filing in federal district court that she intended to transfer this case to such a court. By a March 3, 2006 letter faxed to me -- with a copy to the Respondent and the Associate Solicitor, Department of Labor -- the Complainant stated in a one sentence letter, "This letter is to notify all parties that I wish to withdraw my complaint currently with the Department of Labor and file my complaint in Federal Court."

However, before granting Complainant's request to withdraw her complaint with the Department of Labor as a *pro se* complainant, I needed to ensure that the Complainant made a knowing and voluntary withdrawal and was made aware of the possible consequences of withdrawing from this case without first filing in federal district court.

It was unclear in Complainant's request that she was making a knowing and voluntary request to withdraw her case. She had not acknowledged that she understood that by withdrawing her complaint, the Secretary's findings would then be unopposed and become final. She did not state within her request whether she understood that due to the statute of limitations, a voluntary withdrawal -- without first filing in federal district court -- with resulting dismissal, might bar the Complainant from filing another SOX or CCFAA case related to the claim in this case. Any subsequent federal SOX complaint she might later attempt to file against the Respondent -- related to her employment with the Respondent -- might be barred as untimely.

By an earlier order, I informed the parties that I would not approve her request of withdrawing from this forum until she showed documentation of filing in Federal District Court or provided me acknowledgement that she understood that her complaint might be barred by the Statue of Limitations if she withdrew this complaint without first filing in federal district court. I directed the Complainant to complete one of the following:

- (1) Provide sufficient documentation showing she has filed her complaint in federal district court.
- (2) Submit a request for waiver in accordance with 29 C.F.R. § 1980.111(c), and demonstrate her understanding that if she withdraws her claim without first filing in federal district court, she understands and acknowledges that by withdrawing this complaint, the Secretary's findings would then be unopposed and become final, and any subsequent federal SOX complaint she might later attempt to file against the Respondent -- related to her employment with the Respondent -- would be barred as untimely.
- (3) Comply with the discovery request submitted by Respondent.

The Complainant subsequently obtained an attorney who has assisted the Complainant in filing her complaint in federal district court.

ORDER

Upon considering the foregoing,

IT IS HEREBY ORDERED that the Complainant has complied with the requirements under 29 C.F.R. § 1980.114 and may pursue her complaint in federal district court. By the filing of the complaint in federal district court, jurisdiction is now with that Court and no longer with the U.S. Department of Labor. Approval of her transfer of this case terminates all proceedings before the Office of Administrative Law Judges. All previously scheduled events and requirements related to this case as set by me as the administrative law judge and by the U.S. Department of Labor, including the scheduled hearing, are hereby cancelled.

A

WILLIAM S. COLWELL
Administrative Law Judge

Washington, D.C.
WSC:dj