

U.S. Department of Labor

Office of Administrative Law Judges
O'Neill Federal Building - Room 411
10 Causeway Street
Boston, MA 02222

(617) 223-9355
(617) 223-4254 (FAX)



Issue Date: 08 May 2006

CASE NO.: 2006-SOX-00056

In the matter of:

JANICE STEVENSON
Complainant

v.

VERTEX PHARMECEUTICALS, INCORPORATED

and

AJILON FINANCE COMPANY
Respondents

APPEARANCES:

Janice Stevenson, *Pro Se*

Henry T. Goldman, Esq. and Christine Watts Johnston, Esq., Kirkpartick & Lockhart Nicholson Graham, LLP, Boston, Massachusetts, for Vertex Pharmaceuticals, Inc.

Matthew R. Estabrook, Esq., Gibson, Dunn & Crutcher, LLP, Washington, D.C. for Ajilon Finance, Inc.

BEFORE: COLLEEN A. GERAGHTY
Administrative Law Judge

ORDER DISMISSING COMPLAINT

This proceeding arises from a complaint of discrimination filed under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C.A. § 1514A (West 2004) and the procedural regulations found at 29 C.F.R. Part 1980 (2004). On April 5, 2006, the Respondents submitted an Emergency Motion to Dismiss Complaint. The Respondents offered two separate grounds for dismissal of the claim. First, the Respondents argued that dismissal is warranted because of the Complainant's "continued failure to participate in the administrative process, including her failure to attend her April 4, 2006, deposition." Resp'ts Mot. to Dismiss at 1. Second, the Respondents asserted that

the claim ought to be dismissed as it is untimely. Resp'ts Mot. to Dismiss at 8. On April 12, 2006 the Complainant responded, arguing that her deposition is not warranted and that the Respondents do not have a right to obtain discovery of documents. *Id.*¹ The Complainant did not respond to the assertion that her claim is untimely.

The Respondents' Motion to Dismiss alleges that the claim ought to be dismissed because it was filed more than 90 days after any allegedly adverse employment action by the Respondents. Resp'ts Mot. to Dismiss at 8-9. The Sarbanes-Oxley statute requires that complaints be filed "not later than 90 days after the date on which the [alleged] violation occurred." *See* 18 U.S.C. § 1514A(b)(2)(d). The implementing regulation provides that "[t]he date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing." 29 C.F.R. § 1980.103(d). The Respondents assert that the complaint was filed with OSHA by fax dated January 3, 2006, as evidenced by the fax receipt line attached to the complaint appended to OSHA's letter dismissing the complaint. Resp'ts Mot. to Dismiss at 8-9. A filing date of January 3, 2006 would render the complaint untimely as it was filed more than 90 days after any alleged adverse employment action.

As the Complainant did not respond to the Respondents' claim that her complaint was untimely, the undersigned issued an Order on April 21, 2006 directing the Complainant to respond to the assertion that her claim was filed late, by May 4, 2006. The Court's order specifically advised the Complainant that "[a]s the Respondent's argument, if accepted, may result in dismissal of the complaint, the Complainant is ordered to file a response to the allegation that her claim is untimely with the OALJ's Boston Office no later than May 4, 2006." April 21, 2006 Order. The Complainant has not responded to the Court's order.²

The Sarbanes-Oxley statute requires that complaints be filed "not later than 90 days after the date on which the [alleged] violation occurred." *See* 18 U.S.C. § 1514A(b)(2)(d). The implementing regulation provides that "[t]he date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing." 29 C.F.R. § 1980.103(d). On the record presently before me, it appears that the Complainant was terminated on September 30, 2005 and filed her complaint by facsimile on January 3, 2006. Therefore, the complaint was filed more than 90 days after the alleged violation, specifically it was filed 95 days after the termination. After consideration of the evidence presented, the Respondents' assertions that the claim is untimely, and the Complainant's refusal to respond to the Respondents' assertion that

¹ On April 21, 2006, the undersigned issued an Order Denying, in part, Respondents' Motion to Dismiss Complaint, Order Compelling Complainant to Provide Discovery and Order Denying Respondents' Motion for Costs and Attorney Fees. The undersigned construed the Respondents' Motion to Dismiss for failure to cooperate in discovery as a motion to compel discovery and Ordered the Complainant to make herself available for deposition and to produce specific documents by May 17, 2006.

² On May 3, 2006, Respondent Vertex filed a Supplemental Memorandum by Respondent Vertex Pharmaceuticals Incorporated Regarding Timeliness of Filing of Claim by Complainant. The Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges provide that "[u]nless the administrative law judge provides otherwise, no reply to an answer, response to a reply, or any further responsive document shall be filed." 18 C.F.R. 18.6 (b). Vertex did not seek leave to file a reply from the court. As a consequence, the court did not consider the Supplemental Memorandum filed by Respondent Vertex.

her claim is untimely, despite the Court's Order requiring a response, I find that the complaint was untimely and the claim is hereby dismissed.

SO ORDERED.

A

COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of the administrative law judge's decision. See 29 C.F.R. § 1980.110(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. See 29 C.F.R. § 1980.110(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. See 29 C.F.R. § 1980.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.109(c). Even if you do file a Petition, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days after the Petition is filed notifying the parties that it has accepted the case for review. See 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).