



Issue Date: 21 February 2007

CASE NO.: 2006-SOX-00090

In the Matter of:

**THOMAS STEWART,
Complainant,**

v.

**HORN MURDOCK COLE and
FEDERAL NATIONAL MORTGAGE
ASSOCIATION (FANNIE MAE),
Respondents.**

RECOMMENDED ORDER OF DISMISSAL

As Complainant Thomas Stewart (“Complainant”) has not filed Objections to the Findings of the Occupational Safety and Health Administration (OSHA), on behalf of the Secretary of Labor, this case is being dismissed.

Background

The instant case was brought by Complainant under the employee protection (whistleblower) provisions of the Sarbanes-Oxley Act of 2002 (the “Act”), 18 U.S.C. §1514A, with implementing regulations appearing at 29 C.F.R Part 1980. In his March 16, 2006 complaint, Complainant asserted that his employment was terminated by his employer, Horn Murdock Cole, an agent of Fannie Mae, because he engaged in protected activities. Following an investigation, by letter of May 4, 2006, the Regional Administrator of the Occupational Safety and Health Administration (OSHA), on behalf of the Secretary of Labor, found that there was no reasonable cause to believe that the Respondents violated the Act.

In lieu of filing Objections to OSHA’s findings, counsel for Complainant, William H. Shawn, Esq. of the law firm of ShawnCoulson, filed a letter by facsimile on May 22, 2006 requesting “a 30-day extension of time to the June 6, 2006 deadline to file our objection” to the Secretary’s Findings. Counsel asserts that the Complainant never received OSHA’s May 4, 2006 findings and his law firm received the findings on May 17th.

In a Notice of Assignment and Order of June 2, 2006, I accepted the May 22, 2006 facsimile as a timely Objection to the Secretary’s Findings and Hearing Request, subject to substitution of a formal pleading. That Notice allowed Complainant until July 16, 2006 to either

substitute a formal pleading setting forth Complainant's Objection(s) and Hearing Request or withdraw the Objection. In addition, I stayed proceedings until Complainant files his formal Objection(s) or Withdrawal.

By facsimile of October 27, 2006, Complainant's counsel advised that Complainant would not be filing anything further in this matter.

Discussion

Under 29 C.F.R. §1980.106(a) any party who desires review, including judicial review, of the findings and preliminary order of OSHA "must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to paragraph (b) of §1980.105." If no timely objection is filed, the findings or preliminary order become the final decision of the Secretary, not subject to judicial review. 29 C.F.R. §1980.106(c).

Under section 1980.111(c) of title 29, C.F.R.:

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the [Administrative Review] Board. The judge or the Board, as the case may be, will determine whether to approve the withdrawal. If the objections are withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

As noted above, I construed Complainant's initial filing as an objection subject to substitution of a formal pleading; I allowed the Complainant until July 16, 2006 to file the objections and hearing request; and I stayed proceedings until he did so or withdrew his objections.

Complainant's October 27, 2006 correspondence indicated that he did not intend to file anything further. Although I accepted Complainant's May 22, 2006 facsimile as a timely Objection to the Secretary's Findings and Hearing Request, that acceptance was subject to substitution of a formal pleading. However, Complainant has indicated that no formal pleading is forthcoming.

Dismissal is appropriate. As no formal Objection to the Secretary's Findings and Hearing Request has been or will be filed, there is no basis for jurisdiction under the Act and this case is subject to dismissal under 29 C.F.R. §1980.106(a). In this regard, the May 22, 2006 facsimile merely requested additional time and, without supplementation, was insufficient to constitute an Objection to the Secretary's Findings. My acceptance of the Complainant's request for extension of time as an Objection was rendered a nullity by Complainant's failure to file a formal pleading within the allotted time.

Assuming, arguendo, that the Complainant's facsimile may be construed as a timely Objection, notwithstanding the lack of a formal pleading, dismissal would still be appropriate. Complainant has indicated that he does not intend to pursue this matter, and this case is alternatively subject to dismissal under 29 C.F.R. § 1980.111(c). Accordingly,

ORDER

IT IS HEREBY ORDERED that the instant case be, and hereby is, **DISMISSED WITHOUT PREJUDICE**.

A

PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.

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).