



Issue Date: 20 November 2006

CASE NO: 2006-SOX-00122

In the Matter of:

DAVID TECHMANSKI,
Complainant,

v.

FISERV, INC.,
FISERV TRUST COMPANY, and
FISERV INVESTMENT SUPPORT SERVICES,
Respondents.

RECOMMENDED FINAL ORDER OF DISMISSAL

The instant case was brought by Complainant under the employee protection provisions of the Sarbanes-Oxley Act of 2002 (“the Act”), 18 U.S.C. § 1514A, with implementing regulations at 29 C.F.R. Part 1980. The matter was originally scheduled for hearing on November 1, 2006 in Denver, Colorado after Complainant objected to the July 17, 2005 findings of the Regional Administrator for the Occupational Safety and Health Administration dismissing his complaint. The hearing was thereafter rescheduled and is presently set for January 16, 2007.

On November 15, 2006 I received correspondence from Respondent’s counsel, Nicholas J. Pappas, stating that Claimant informed him the previous day that he wished to withdraw his complaint. Respondent’s counsel agreed to the request, and to waive Respondent’s rights to seek attorney’s fees and costs relating to Claimant’s November 14, 2006 deposition, conditioned on Mr. Techmanski’s executing a Stipulation of Dismissal with Prejudice. A copy of the Stipulation of Dismissal with Prejudice was thereafter executed and is attached to counsel’s correspondence.

Applicable regulations provide that, “[a]t any time prior to the filing of objections to the findings or preliminary order, a complainant may withdraw his or her complaint under the Act by filing a written withdrawal with the Assistant Secretary.” 29 C.F.R. § 1980.111(a). Since Complainant has already filed objections to OSHA’s findings, this part of the regulation is inapplicable. The regulation further provides, however, that:

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 the withdrawal will be approved. If the objections are withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

29 C.F.R. § 1980.111(c).

As the Secretary's findings are not final and a written withdrawal has been filed, approval of the withdrawal is appropriate. Although Complainant has indicated a desire to withdraw his complaint, he is actually withdrawing his hearing request. Accordingly, good cause having been shown, Complainant's request for withdrawal will be granted and this case will be dismissed.

Order

IT IS HEREBY ORDERED that Complainant's request to withdraw is GRANTED and his hearing request is DISMISSED WITH PREJUDICE.

A

STEPHEN L. PURCELL
Administrative Law Judge

Washington, D.C.