



**Issue Date: 20 November 2007**

**Case No.: 2008-SOX-1**

**IN THE MATTER OF**

**DOROTHY KULIK,**  
Complainant

**vs.**

**AFFILIATED COMPUTER SERVICES, INC.,**  
Respondent

### **Recommended Order to Dismiss**

This proceeding arises under the employee protective provisions of the Sarbanes-Oxley Act of 2002 (the Act)<sup>1</sup> and regulations promulgated thereunder.<sup>2</sup> The Secretary of Labor is empowered to investigate and determine whistleblower complaints filed by employees of publicly traded companies who are allegedly discharged or otherwise discriminated against with regard to their terms and conditions of employment for providing information about fraud against company shareholders to supervisors, federal agencies or members of Congress.

Complainant Dorothy Kulik filed a complaint that Respondent Affiliated Computer Service Inc. discriminated against her in violation of the Act. The complaint was investigated by the Occupational Health and Safety Administration (OSHA) and found to be without merit. Although the controlling regulations provide that a complainant dissatisfied with the determination of an OSHA investigation may object and request a hearing *de novo* before an administrative law judge, Complainant filed an appeal in the U.S. Court of Appeals for the Fifth Circuit.<sup>3</sup> The Chief Administrative Law Judge elected to treat that appeal as a demand for a hearing and assigned the case to this court for scheduling. Complainant refused to take part in a conference call conducted for the purpose of clarifying Complainant's position and setting a pre-hearing schedule.

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<sup>1</sup> 18 U.S.C. § 1514A.

<sup>2</sup> 29 C.F.R. Part 1980.

<sup>3</sup> Apparently, Complainant originally filed her appeal in the District Court, and then voluntarily dismissed it to take it to the circuit.

Complainant was then ordered to notify this court in writing of her intent to either proceed in District Court, proceed with an administrative hearing, or withdraw her complaint. She responded by a letter which indicated she intended to pursue her case in Federal Court.

Since 180 days have elapsed since her original filing, Complainant is entitled to prosecute her claim in Federal Court.<sup>4</sup> Accordingly, an order was issued giving the parties 10 days to show cause why Complainant's case should not be dismissed. Complainant received the order on 29 Oct 07. Her only response was to provide a copy of a 1 Nov 07 filing with the Fifth Circuit relating to a motion for sanctions.

## **ORDER**

The complaint is dismissed.

**So ORDERED.**

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**PATRICK M. ROSENOW**  
**Administrative Law Judge**

**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

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<sup>4</sup> 18 U.S.C. § 1514A; 29 C.F.R. §1980.114(a).

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).