



In the Matter of:

JANICE STEVENSON,

COMPLAINANT,

v.

**VERTEX PHARMACEUTICALS, INC.
and AJILON FINANCE COMPANY,**

RESPONDENTS.

ARB CASE NO. 06-107

ALJ CASE NO. 2006-SOX-056

DATE: February 29, 2008

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Janice Stevenson, *pro se*, Cambridge, Massachusetts

For the Respondent:

Henry T. Goldman, Esq. and Christine Watts Johnson, Esq., *Kirkpatrick & Lockhart, Nicholson, Graham, LLP*, Boston Massachusetts, for Vertex Pharmaceuticals

Matthew R. Esabrook, Esq., *Gibson, Dunn & Crutcher, LLP*, Washington, District of Columbia, for Ajilon Finance, Incorporated

FINAL DECISION AND ORDER

On January 3, 2006, Janice Stevenson filed a complaint with the United States Department of Labor. She alleged that when Vertex Pharmaceuticals, Inc. and Ajilon Finance Company terminated her employment, they violated the employee protection section of the Sarbanes-Oxley Act of 2002 (SOX).¹ The SOX prohibits employers from

¹ 18 U.S.C.A. § 1514A (West Supp. 2005). Regulations implementing the SOX are found at 29 C. F. R. Part 1980 (2007).

retaliating against employees for providing information or assisting in investigations related to securities fraud.² Stevenson filed an amended complaint indicating that the termination had occurred on September 30, 2005.

Vertex and Ajilon filed a joint motion to dismiss Stevenson's complaint. They argued, in part, that Stevenson's complaint was filed 95 days after she was terminated. Therefore, the complaint should be dismissed because the limitations period for filing SOX complaints is 90 days.³ Stevenson did not respond to this argument. On April 21, 2006, the Labor Department Administrative Law Judge (ALJ) assigned to the case ordered Stevenson to file a response to the timeliness issue with the Office of Administrative Law Judges (OALJ) in Boston no later than May 4, 2006.

On May 8, 2006, the ALJ issued an Order Dismissing Complaint.⁴ She found that Stevenson did not respond to the April 21 order. Furthermore, she found that since Stevenson filed her complaint 95 days after she had been terminated, the complaint was untimely. The ALJ therefore recommended that the complaint be dismissed. Stevenson appealed to this Board.⁵

Stevenson argues to us that she responded to the ALJ's April 21 order. She asserts that on April 22, "I sent everyone a copy of my response by email."⁶ As evidence of this, Stevenson attached a copy of this email to her brief. The email reads, "The due date for my response to the allegation that my claim is untimely is Mary [sic] 4, 2006. Plaintiff may send more documentary evidence before May 4, 2006 when it has been scanned and converted."⁷ The copy of this email also shows that 5 documents were attached to it. But we cannot determine what these attachments are or contain because Stevenson did not append copies of these attachments to her brief.

² 18 U.S.C.A. § 1514A(a).

³ See 18 U.S.C.A. § 1514A(b)(2)(D) (SOX complaints must be filed "not later than 90 days after the date on which the violation occurs."). Stevenson faxed her SOX complaint to the Labor Department on January 3, 2006. The regulations that implement the SOX permit complaints to be filed via fax. The date of filing is the date the fax is transmitted. See 29 C.F.R. § 1980.103(d).

⁴ *Stevenson v. Vertex Pharm., Inc. & Ajilon Fin. Co.*, 2006-SOX-056 (ALJ May 8, 2006).

⁵ The Administrative Review Board has jurisdiction to decide Stevenson's appeal. See Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1980.110.

⁶ Brief at 1.

⁷ Brief, Attachment 1.

Stevenson argues that she also “sent everyone” an email on May 3, 2006. This email, a copy of which she attached to her May 17, 2006 Petition for Review of the Order Dismissing Complaint, reads, “Attached is PLAINTIFF’S RESPONSE TO RESPONDENT’S SUPPLEMENTAL MEMORANDUM.” Here, Stevenson did append a copy of the attachment to this email. In this undated, unverified document, Stevenson avers that she was terminated on October 24, 2005, and that therefore her January 3, 2006 complaint should not be dismissed because it was filed within 90 days of the October 24 termination.⁸

Vertex and Ajilon argue that Stevenson did not file a response because the regulations governing procedures in SOX litigation do not permit email filings.⁹ Instead, the applicable regulation requires that all documents to be filed “shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges” in Washington, D.C., or to the “OALJ Regional Office” where the matter is pending.¹⁰ In fairness to Stevenson, a pro se litigant, we note that other regulations pertaining to SOX proceedings do permit email filings.¹¹

Still, even if the SOX regulations explicitly permitted Stevenson to file her response by email, according to the list of persons to whom Stevenson addressed the emails, neither her April 22 nor May 3 email was addressed, and therefore sent, to the Boston OALJ or any other OALJ office.¹² Therefore, Stevenson did not send her emails to the Boston OALJ as the ALJ ordered. This explains why the ALJ found that Stevenson did not respond to her April 21 order to respond to the timeliness argument. Furthermore, since Stevenson’s May 3 email containing her argument that the termination occurred on October 24 was not sent to the Boston OALJ (or other OALJ), she never presented that argument to the ALJ. Thus, we will not consider it on appeal.¹³

⁸ May 17, 2006 Petition for Review, Attachment 1.

⁹ Ajilon Brief at 6-7.

¹⁰ 29 C.F.R. § 18.3 (a), (b).

¹¹ See 29 C.F.R. § 1980.103 (d) (SOX complaints may be filed by email to the Occupational Safety and Health Administration’s (OSHA) Area Director); 29 C.F.R. § 1980.106 (a) (Objections to OSHA’s findings and preliminary order in SOX cases may be filed by email with the Labor Department’s Chief Administrative Law Judge in Washington, D.C.); 29 C.F.R. § 1980.110 (a) (Petitions for review by the Administrative Review Board may be filed by email.). Though these 29 C.F.R. Part 1980 regulations permit email filing, the ALJ warned Stevenson that she “must comply with all of the Court’s orders, and you must comply with the procedural rules for proceeding in matters before the Office of Administrative Law Judges. And those rules and regulations can be found at 29 C.F.R. Part 18.” March 24, 2006 Telephone Conference Transcript at 6.

¹² See Stevenson Brief, Attachment 1; Petition for Review, Attachment 1.

To conclude, the ALJ properly granted the joint motion to dismiss because, based on the record before her, Stevenson filed her SOX complaint 95 days after she was terminated. Accordingly, we accept her recommendation that this complaint be **DISMISSED**.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

¹³ See *Rollins v. Am. Airlines, Inc.*, ARB No. 04-140, ALJ No. 2004-AIR-009, slip op. at 4 n.11 (ARB Apr. 3, 2007 (corrected)); *Carter v. Champion Bus, Inc.*, ARB No. 05-076, ALJ No. 2005-SOX-023, slip op. at 7 (ARB Sept. 29, 2006).