



In the Matter of:

JOHN ROULETT,

ARB CASE NO. 05-045

COMPLAINANT,

ALJ CASE NO. 2004-SOX-00078

v.

DATE: August 30, 2005

**AMERICAN CAPITAL ACCESS
SERVICE CORPORATION,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Andrew M. Lankler, Esq., Lankler & Carragher, LLP, New York, New York

For the Respondent:

Kevin G. Lauri, Esq., Jackson Lewis LLP, New York, New York

FINAL DECISION AND ORDER DISMISSING APPEAL

The Complainant, John Roulett, filed a complaint on May 11, 2004, under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (SOX),¹ and its implementing regulations² with the Department of Labor's Occupational Safety and Health Administration (OSHA). Roulett alleged that the Respondent, American Capital Access Service Corporation, retaliated

¹ 18 U.S.C.A. § 1514A (West Supp. 2003).

² 29 C.F.R. Part 1980 (2004).

against him in violation of SOX's whistleblower protection provisions.³ OSHA investigated the complaint and issued a letter advising the parties that the complaint lacked merit because American Capital was not covered by SOX and Roulett did not timely file his complaint.

Roulett requested a hearing before a Department of Labor Administrative Law Judge (ALJ). On December 22, 2004, the ALJ issued an Order Denying Motion to Amend the Complaint and [Recommended] Decision and Order Dismissing the Complaint (R. D. & O.). The ALJ found that American Capital did not fall within SOX's coverage and that Roulett failed to file a timely complaint because he did not file his complaint within ninety days of the date on which American Capital terminated his employment.⁴

Roulett filed a Petition for Review of the R. D. & O. with the Administrative Review Board on January 7, 2005.⁵ On July 21, 2005, Roulett informed the Board that he intended to pursue his SOX case in federal court.

If the Board has not issued a final decision within 180 days of the date on which the complainant filed the complaint and there is no showing that the complainant has acted in bad faith to delay the proceedings, the complainant may bring an action at law or equity for de novo review in the appropriate United States district court, which will have

³ Title VIII of Sarbanes-Oxley is designated the Corporate and Criminal Fraud Accountability Act of 2002. Section 806 covers companies with a class of securities registered under section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, and companies required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 780(d)), or any officer, employee, contractor, subcontractor, or agent of such companies. Section 806 protects employees who provide information to a covered employer or a Federal agency or Congress relating to alleged violations of 18 U.S.C. 1341, 1343, 1344, or 1348, or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. In addition, employees are protected against discrimination when they have filed, testified in, participated in, or otherwise assisted in a proceeding filed or about to be filed against one of the above companies relating to any such violation or alleged violation. 68 FR 31864 (May 28, 2003).

⁴ R. D. & O. at 11.

⁵ See 29 C.F.R. § 1980.110(a). The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under SOX. Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64272 (Oct. 17, 2002).

jurisdiction over the action without regard to the amount in controversy.⁶ Accordingly, because Roulett has opted to pursue his SOX complaint in district court rather than at the Board, we **DISMISS** his appeal.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

⁶ 18 U.S.C.A. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114. As is usual, the 180-day period for deciding the case had expired before the Complainant filed his petition with the Board.