



In the Matter of:

MARK DIAMOND,

ARB CASE NO. 08-033

COMPLAINANT,

ALJ CASE NO. 2006-SOX-044

v.

DATE: December 30, 2008

**SED INTERNATIONAL HOLDINGS,
INC.,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL ORDER DISMISSING APPEAL

On August 24, 2005, the Complainant, Mark Diamond, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration alleging that his employer, SED International Holdings, had retaliated against him in violation of the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX).¹ On December 11, 2007, a Department of Labor Administrative Law Judge issued a Recommended Decision and Order dismissing Diamond's complaint. Diamond filed a petition for review with the Administrative Review Board on December 20, 2007. The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under SOX.²

On November 17, 2008, the Board received a facsimile from Diamond indicating that he intended to bring an action in federal court, as authorized by 29 C.F.R. §

¹ 18 U.S.C.A. § 1514A (West 2002).

² Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1980.110(a)(2006).

1980.114(a), for de novo review of the claim currently pending before the Board. 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 jurisdiction over the action without regard to the amount in controversy.³ Accordingly, we ordered the parties to show cause no later than December 22, 2008, why the Board should not dismiss Diamond's appeal pursuant to 29 C.F.R. § 1980.114.

We have received no response to the Board's show cause order. Accordingly, we **DISMISS** Diamond's appeal pursuant to 29 C.F.R. § 1980.114.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

³ 18 U.S.C.A. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114. As is the usual case, by the time the Board received the petition for review, the 180-day period for deciding the case had already expired.