

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 30 November 2004

In the Matter of:

NICOLAS HADDAD,
Complainant

Case No. 2004-SOX-48

v.

ITT INDUSTRIES, INC.,
Respondent

ORDER DISMISSING APPEAL TO OALJ WITHOUT PREJUDICE

This proceeding arises from a claim of whistleblower protection under the Corporate and Criminal Fraud Accountability Act, Section 806 of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A. The Complainant requested the Office of Administrative Law Judges ("OALJ") to review a finding by the Occupational Safety and Health Administration ("OSHA") that there is not reasonable cause to believe that the Respondent violated his rights under the Act. The statute and implementing regulations provide that a complainant may file a complaint in the United States District Court if the Secretary of Labor has not issued a final decision within 180 days of the filing of a complaint with OSHA, and there is no showing that such delay is due to the bad faith of the complainant. *See* 18 U.S.C. § 1514A(b)(1)(B); 29 CFR § 1980.114. More than 180 days have elapsed since the complaint was filed in this case, and on November 9, 2004, counsel for the Complainant filed a notice of voluntary dismissal indicating his intent to file a complaint in the United States District Court. Pursuant to 29 CFR §§ 18.4 and 18.6, the Respondent's response was due on November 24, 2004. No response having been filed, I find that the Complainant's request for dismissal without prejudice should be granted.

IT IS THEREFORE ORDERED that the appeal of the OSHA finding filed with the OALJ in this matter is DISMISSED WITHOUT PREJUDICE.

A

ALICE M. CRAFT
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This order of dismissal without prejudice shall become the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.110, unless a petition for review is timely filed with the Administrative Review Board ("Board"), US Department of

Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210, and within 30 days of the filing of the petition, the ARB issues an order notifying the parties that the case has been accepted for review. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b), as found in OSHA, Procedures for the Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002; Interim Rule, 68 Fed. Reg. 31860 (May 29, 2003).