

U.S. Department of Labor

Office of Administrative Law Judges
St. Tammany Courthouse Annex
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Covington, LA 70433

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Issue Date: 19 November 2008

CASE NO.: 2008-SOX-00009

IN THE MATTER OF

**JACQUE BERGMAN,
Complainant**

v.

**CHESAPEAKE ENERGY CORPORATION,
Respondent**

ORDER DISMISSING CLAIM FOR ABANDONMENT

On July 13, 2007, Complainant filed a complaint with the Department of Labor Occupational Safety and Health Administration (herein "OSHA") under the employee protective provisions of SOX contending that she was constructively discharged after she expressed concerns about lack of training regarding Respondent's human resources policies and procedures. The Secretary of Labor through her agent, OSHA investigated the July 13, 2007 complaint and on September 24, 2007 issued a report dismissing the complaint, finding no evidence of a SOX violation. Complainant filed objections and a request for hearing regarding the OSHA determination. The matter was referred to the undersigned for hearing.

On November 16, 2007, Respondent filed a Motion to Dismiss or, in the Alternative, to Compel Arbitration arguing that Complainant's objections and request for hearing were not timely filed. On November 23, 2007, Complainant filed a Response to Motion to Dismiss or, in the Alternative, to Compel Arbitration contending that her objections and request for hearing were timely filed as her attorney did not receive OSHA's report until October 1, 2007.

On December 19, 2007, the undersigned directed Complainant to invoke the arbitration process and to provide the undersigned with a progress report within 60 days indicating the steps she has taken to arbitrate her dispute. The undersigned further noted that failure to comply with this order may result in case dismissal. On October 21, 2008, a motion to dismiss was filed in this office by Respondent, seeking to dismiss this case for failure to follow this Court's order to compel arbitration. This Court responded with an order to show cause on October 27, 2008, giving Complainant ten days to show cause why this case should not be dismissed. As of November 6, 2008, no cause has been shown to forgo dismissal of this case.

Considering the foregoing, I hereby dismiss this claim with prejudice based on abandonment by Complainant.

A

**CLEMENT J. KENNINGTON
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, Suite S-5220, 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 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).