

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



In the Matter of:

CAMILO JOSÉ SÁNCHEZ RAMOS,
COMPLAINANT,

ARB CASE NO. 2022-0042

ALJ CASE NO. 2022-SOX-00004

v.

DATE: September 9, 2022

GLOBANT S.A.,

RESPONDENT.

Appearances:

For the Complainant:

Camilo José Sánchez Ramos; *Pro Se*; San Andrés Cholula, Puebla, Mexico

For the Respondent:

Maria A. Garrett, Esq.; *DLA Piper LLP (US)*; Dallas, Texas

Before: HARTHILL, Chief Administrative Appeals Judge, and BURRELL, Administrative Appeals Judge

**NOTICE OF ORDER GRANTING COMPLAINANT'S
REQUEST TO WITHDRAW PETITION FOR REVIEW**

PER CURIAM:

This case arises under the whistleblower protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act (SOX or Section 806), as amended, and its implementing

regulations.¹ Complainant Camilo José Sánchez Ramos (Ramos) filed a complaint against Respondent Globant S.A. (Globant) alleging that Globant terminated his employment because he engaged in activity protected by SOX. On May 11, 2022, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order Granting Summary Decision and Dismissing Complaint (D. & O.). In the D. & O., the ALJ dismissed Ramos' complaint for lack of jurisdiction under SOX and denied Ramos' request for leave to amend his complaint to add a whistleblower retaliation claim under the Anti-Money Laundering Act.²

On May 25, 2022, Ramos filed a petition for review with the Administrative Review Board (the Board or ARB). On May 27, 2022, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule (Briefing Order). The Briefing Order required Ramos to file an opening brief by June 24, 2022. Ramos did not file an opening brief as ordered.

Instead, on June 26, 2022, Ramos filed a "Motion Requesting the Honorable ARB Permission to Remove the Claim to US Federal Court Pursuant to 18 U.S Code § 1514A (b)(1)(B)." The body of the motion read, in its entirety: "Pursuant to 18 U.S Code § 1514A (b)(1)(B), I am respectfully requesting The Honorable Administrative Review Board permission to remove this claim to bring my claims before 'the appropriate district Court of the United States.'"

The provision Ramos cited, 18 U.S.C § 1514(b)(1)(B), provides that a complainant may seek relief "if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, [by] bringing an action at law or equity for de novo review in the appropriate district court of the United States" Accordingly, on June 28, 2022, the Board issued an Order of Clarification stating that "if the complainant believes he is entitled to remove his case by filing in federal court, he may do so and he does not require the permission of the Board." The Board also noted the regulatory requirement that within seven days after filing a complaint in federal court, Ramos must file a copy of the file-stamped complaint with the Board.³

¹ 18 U.S.C. § 1514A; 29 C.F.R. Part 1980.

² 31 U.S.C. § 5323(g).

³ 29 C.F.R. § 1980.114(c).

Over the ensuing several weeks, Ramos did not file a copy of a federal complaint with the Board or otherwise indicate to the Board that he had filed a claim in district court. Therefore, on August 11, 2022, the Board issued an Order to Show Cause. The Board advised Ramos that “[u]ntil Complainant files a complaint in federal court pursuant to 18 U.S.C. § 1514A(b)(1)(B) or the case is otherwise disposed of, this case remains pending and active before the Board, and Complainant is required to comply with the Board’s orders.” The Board ordered Ramos to show cause by August 25, 2022, why we should not dismiss his appeal for failing to file an opening brief. The Board instructed Ramos to file a copy of his opening brief along with his response. The Board warned Ramos that if it did not receive Ramos’ response and opening brief, it may dismiss the appeal without further notice.

Ramos responded to the Order to Show Cause on August 25, 2022. In that response, Ramos indicated his desire to withdraw his petition for review from the Board. He stated “I do believe I am entitled to remove this case by filing in federal court. I was indeed requesting withdrawal of the case when using the term ‘permission to remove the claim to US Federal Court.’” However, Ramos also indicated that he did not yet intend to file a complaint for de novo review in federal district court. He stated “[i]t is known to me that I have four years to file a SOX case before a U.S. District Court after withdrawal from the Department of Labor, so I am currently analyzing the possibility of not only applying SOX but also other U.S. Federal Laws that may be of the interest of some Departments within the US Government.” Ramos also added that the Board’s Order of Clarification confused him because he is not a native English speaker and because he has limited knowledge of the procedural rules applicable to this action. He concluded that “[f]or all the stated above, and by trying to save resources to the Judicial System, I didn’t file the opening Brief before” the ARB.

As relevant to this case, a party like Ramos who has petitioned the Board for review of an ALJ's decision has two options for terminating his pending appeal prior to the Board's final adjudication.⁴ First, if 180 days have passed since the petitioner filed his initial OSHA complaint and the Secretary of Labor has not issued a "final decision" with respect to the petitioner's claim, and if there is no showing that the Secretary's delay in issuing a final decision is due to the petitioner's bad faith, then the petitioner may file a complaint for de novo review in an appropriate federal district court.⁵ As the Board expressed to Ramos in its previous orders, if Ramos believes these conditions are satisfied in his case, he may file a complaint for de novo review without seeking or obtaining the Board's permission. Once a petitioner files a proper complaint for de novo review in district court, the Board loses the jurisdiction to hear his appeal.⁶

Separately and alternatively, a petitioner may request to withdraw his petition for review with the Board.⁷ If the Board grants a petitioner's request to withdraw, "the ALJ's decision will become the final order of the Secretary."⁸

Ramos has requested to withdraw his Petition for Review in anticipation of filing, but before actually filing, a complaint for de novo review in district court. However, because withdrawal would render the ALJ's decision a "final order of the Secretary," and because de novo review in federal district court may only occur if the Secretary has not yet issued a "final decision," Ramos may be barred from seeking de novo review of his claim if he withdraws his Petition for Review before filing a complaint in district court.⁹ Instead, if we grant Ramos' request to withdraw

⁴ *Vodicka v. Dobi Med. Int'l, Inc.*, ARB No. 2006-0037, ALJ No. 2006-SOX-00111, slip op. at 2 (ARB May 30, 2007). There is also a third option that is not relevant to this case—the parties could settle and request the Board's approval of their settlement agreement. *Id.*; see also 29 C.F.R. § 1980.111(d)(2).

⁵ See 18 U.S.C. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114(a).

⁶ See 18 U.S.C. § 1514A(b)(1)(B); *Stone v. Duke Energy Corp.*, 432 F.3d 320, 322-23 (4th Cir. 2005).

⁷ 29 C.F.R. § 1980.111(c).

⁸ *Id.*

⁹ See *Mullen v. Norfolk S. Ry. Co.*, No. 2:14-cv-00917, 2015 WL 3457493, at *7-11 (W.D. Pa. May 29, 2015) (unpublished) (finding complainant barred from seeking de novo review in federal district court under similar regulations under the Federal Railroad Safety Act, where ARB issued a final decision dismissing complainant's appeal after complainant expressed his intention to file in federal court, but before complainant filed his complaint). Although we note this potential interpretation of the SOX statute and regulations, we

before he files his district court complaint, Ramos' only recourse may be to file an appeal with the appropriate United States court of appeals.¹⁰ The court of appeals would not review Ramos' case de novo; rather, it would affirm the agency's final decision as long as it is supported by substantial evidence and is not "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."¹¹

SOX's regulations give the ARB the discretion to decide whether to grant a petitioner's request to withdraw a petition for review.¹² The regulations also provide that "[i]n special circumstances not contemplated by the provisions of this part, or for good cause shown, the ALJ or the ARB on review may, upon application, after three days notice to all parties, waive any rule or issue any orders that justice or the administration of the Act requires."¹³ Pursuant to the authority granted to the Board by these regulations, and in recognition of Ramos' pro se status, his admitted confusion with the Board's previous orders and procedural requirements, his expressed desire to exercise his right to proceed with de novo review in federal district court in lieu of maintaining this appeal, and the potential consequences of granting Ramos' request for withdrawal before he actually files a complaint in federal district court, we conclude that immediately granting Ramos' request to withdraw his Petition for Review is not appropriate in the unique circumstances of this case. Instead, the Board hereby gives notice to the parties that we intend to grant Ramos' request to withdraw his Petition for Review and order that his appeal is dismissed forty-five days after the issuance of this Notice.¹⁴ We conclude that this serves the interests and considerations expressed above, while also balancing the

emphasize that the Board is not the tribunal responsible for deciding whether a federal district court would have jurisdiction over Ramos' complaint if he withdraws his petition for review or if his case is otherwise dismissed before he actually files his complaint in district court. That decision must be made by the district court.

¹⁰ 29 C.F.R. § 1980.112(a)-(b).

¹¹ 5 U.S.C. § 706(2); *Yowell v. Admin. Rev. Bd., U.S. Dep't of Labor*, 993 F.3d 418, 421 (5th Cir. 2021); *Lockheed Martin Corp. v. Admin. Rev. Bd., U.S. Dep't of Labor*, 717 F.3d 1121, 1128-29 (10th Cir. 2013).

¹² 29 C.F.R. § 1980.111(c) ("The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review.").

¹³ *Id.* § 1980.115.

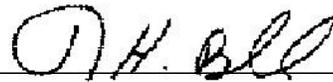
¹⁴ See *Jordan v. Sprint Nextel Corp.*, ARB Nos. 2010-0113, 2011-0020, ALJ Nos. 2006-SOX-00098, 2010-SOX-00050, slip op. at 5 (ARB June 29, 2012) (giving parties notice that complainant's appeal would be dismissed in thirty days pursuant to 29 C.F.R. § 1980.115, where complainant had indicated that he intended to pursue de novo review of some, but not all, of his claims against respondent).

Board's interest in "achiev[ing] orderly and expeditious disposition of cases."¹⁵ If Ramos files a complaint for de novo review in district court before the Board grants his request to withdraw his Petition for Review, he must file with the Board a copy of the file-stamped complaint within seven days of filing.¹⁶



SUSAN HARTHILL

Chief Administrative Appeals Judge



THOMAS H. BURRELL

Administrative Appeals Judge

¹⁵ *Jessen v. BNSF Ry. Co.*, ARB No. 2012-0107, ALJ No. 2010-FRS-00022, slip op. at 2 (ARB July 26, 2013) (internal quotation and citation omitted).

¹⁶ 29 C.F.R. § 1980.114(c).