



In the Matter of:

JACK JORDAN

ARB CASE NO. 2018-0035

COMPLAINANT,

ALJ CASE NO. 2016-SOX-00042

v.

DATE: September 16, 2020

DYNCORP INTERNATIONAL LLC,
JASON BRANCIFORTE, ETHAN
BALSAM and MICHAEL CANNON

RESPONDENTS.

Appearances:

For the Complainant:

Jack Jordan; *pro se*; Parkville, Missouri

For the Respondents Jason Branciforte and Ethan Balsam:

Pamela Bresnahan, Esq.; Samuel J. Mott, Esq; *Vorys, Sater, Seymour
and Pease LLP*; Washington, District of Columbia

For the Respondents DynCorp International LLC and Michael Cannon:

Edward T. Ellis, Esq.; Alexa J. Laborda Nelson, Esq.; *Littler
Mendelson, P.C.*; Philadelphia, Pennsylvania

BEFORE: James D. McGinley, *Chief Administrative Appeals Judge*,
Thomas H. Burrell and Heather C. Leslie, *Administrative Appeals Judges*

DECISION AND ORDER

PER CURIAM. The Complainant, Jack Jordan, filed a retaliation complaint with OSHA under Section 806 of the Corporate and Criminal Fraud Accountability

Act of 2002, Title VIII of the Sarbanes-Oxley Act,¹ and its implementing regulations.²

OSHA concluded that there was no reasonable cause to believe the Respondents had retaliated against Complainant in violation of SOX. Complainant objected and the case was referred to the Office of Administrative Law Judges (OALJ) at Complainant's request. The Administrative Law Judge (ALJ) granted the Respondents' motions to dismiss based on Complainant's failure to provide any definite information regarding the complaint, including identifying the required elements under the act. Complainant filed a petition requesting that the Administrative Review Board (ARB) review the ALJ's order. We granted that petition and now affirm.³

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the Administrative Review Board to issue agency decisions under the SOX.⁴ The ARB reviews the ALJ's factual findings for substantial evidence, and conclusions of law de novo.⁵ In considering a dismissal for failure to state a claim, the ARB must accept the non-moving party's factual allegations as true and draw all reasonable inferences in the non-moving party's favor.⁶

DISCUSSION

In a proceeding under the Act a party "may move to dismiss part or all of the matter for reasons recognized under controlling law, such as lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted, or

¹ 18 U.S.C. § 1514A (2010) (SOX).

² 29 C.F.R. Part 1980 (2019).

³ By Order dated January 29, 2019, the Board consolidated this appeal with Complainant's subsequent appeal, ARB No. 19-0027, for purposes of rendering a decision. We have determined that judicial efficiency would be better served by separating the appeals and issuing individual decisions. Thus, this decision will only address the appeal ARB No. 18-0035.

⁴ Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)). 85 Fed. Reg. 13,186 (Mar. 6, 2020); see 29 C.F.R. § 1980.110(a).

⁵ 29 C.F.R. § 1980.110(b). *Gunther v. Deltek, Inc.*, ARB Nos. 2013-0068, -0069; ALJ No. 2010-SOX-00049, slip op. at 2 (ARB Nov. 26, 2014).

⁶ *Tyndall v. U.S. EPA*, ARB No. 1996-0195, ALJ Nos. 1993-CAA-00006, 1995-CAA-00005; slip op. at 2 (ARB June 14, 1996).

untimeliness.”⁷ In administrative whistleblower proceedings before the Department of Labor, a sufficient statement of the claims need only provide some facts about the protected activity showing some “relatedness” to the laws and regulations of one of the statutes in our jurisdiction, some facts about the adverse employment action, a general assertion of causation, and a description of the relief that is sought.⁸

The record supports the ALJ’s decision to dismiss Jordan’s SOX case. In his extensive decision, the ALJ thoroughly reviewed and rejected Complainant’s contentions noting that they do not address the required elements of a claim under SOX. In addition, the ALJ provided a very thorough analysis as to why he should not be disqualified from issuing a decision in this case. On appeal, Jordan has failed to present any argument that compels us to reverse the ALJ’s ruling.⁹ The ALJ thoroughly explained his factual and legal findings, and we incorporate them into this decision.

CONCLUSION

The ALJ’s determination that Complainant failed to give fair notice of his complaint to Respondents and that it was not necessary to disqualify himself from the case is correct. Accordingly, we **AFFIRM** the ALJ’s decision and **DISMISS** Jordan’s complaint.

SO ORDERED.

⁷ 29 C.F.R. § 18.70(c).

⁸ See *Gallas v. Medical Center of Aurora*, ARB No. 2016-0012, ALJ No. 2015-SOX-00013 (ARB April 29, 2017); *Evans v. EPA*, ARB No. 2008-0059, ALJ No. 2008-CAA-00003, at 23 (ARB July 31, 2012).

⁹ Moreover, we reject Complainant’s Motion Regarding the Emails (March 29, 2018). As we affirm the ALJ’s finding that Complainant failed to state a claim, we will not address an issue of discovery in this appeal.