

U.S. Department of Labor

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



IN THE MATTER OF:

CHARLES SCHOOLER,

ARB CASE NO. 2024-0014

COMPLAINANT,

ALJ CASE NO. 2023-SOX-00015

CHIEF ALJ STEPHEN R. HENLEY

v.

DATE: April 5, 2024

FORD MOTOR COMPANY,

RESPONDENT.

Appearances:

For the Complainant:

Charles Schooler; *Pro Se*; Little Elm, Texas

For the Respondent:

Michael Jaskiw, Esq., Jesenka Mrdjenovic, Esq., and Katherine V.A. Smith, Esq.; *Gibson, Dunn & Crutcher LLP*; Washington, District of Columbia, and Los Angeles, California

Before HARTHILL, Chief Administrative Appeals Judge, and WARREN, Administrative Appeals Judge

**NOTICE OF ORDER GRANTING COMPLAINANT'S
REQUEST TO DISMISS 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), as amended, and its implementing regulations.¹ Complainant Charles Schooler (Complainant) alleges that Respondent Ford Motor

¹ 18 U.S.C. § 1514A, as implemented by 29 C.F.R. Part 1980 (2023).

Company (Respondent) took adverse action against him because he engaged in activity protected by SOX.

On January 10, 2024, a United States Department of Labor (Department) Administrative Law Judge (ALJ) issued an Order Granting Respondent's Motion for Summary Decision (D. & O.), in which the ALJ determined that the undisputed facts demonstrated that Complainant did not engage in activity protected by SOX. On January 16, 2024, Complainant filed a Petition for Review with the Administrative Review Board (ARB or Board) seeking review of the D. & O.

On February 1, 2024, the Board issued a Notice of Appeal Acceptance, Electronic Filing Requirements, and Briefing Order (Briefing Order). In the Briefing Order, the Board ordered Complainant to file an Opening Brief in support of the Petition for Review by February 29, 2024.

Complainant did not file an Opening Brief. Consequently, the Board issued an Order to Show Cause on March 20, 2024. In the Order to Show Cause, the Board ordered Complainant to file a response by April 3, 2024, explaining why the Board should not dismiss his appeal for failing to file an Opening Brief. The Board also ordered Complainant to file an Opening Brief with his response.

On March 29, 2024, Complainant filed a document titled "Show of Cause." Complainant apologized for not submitting a timely Opening Brief and stated that he overlooked the email notifying him of the Briefing Order. Complainant also stated that he would be more diligent in the future and asked that his case not be dismissed based on his failure to comply with the Briefing Order. Nevertheless, Complainant still did not file an Opening Brief.

Complainant also filed a second document on March 29, 2024, titled "Request to Kick Out." Complainant stated "[p]ursuant to 29 C.F.R. § 1980.114, I inten[d] to file an action for de novo review in an appropriate District Court of the United States. Accordingly, I request that my appeal before the Board be dismissed."

SOX permits a complainant to file a de novo complaint in federal district court if the Secretary of Labor has not issued a final decision on the complainant's SOX claims within 180 days of the filing of the administrative complaint with the

Department's Occupational Safety and Health Administration.² To invoke this right, a complainant need only file the de novo complaint in the appropriate federal district court, and then file a file-stamped copy of the complaint with the Department within seven days.³ Here, Complainant states that he intends to file a de novo complaint in federal court but apparently has not done so yet.

If the Board grants Complainant's request to dismiss his appeal before he files a de novo complaint in federal district court, the ALJ's D. & O. would become the "final order of the Secretary."⁴ However, de novo review in federal district court may only occur if the Secretary has not yet issued a final decision. This means Complainant may be barred from seeking de novo review if he withdraws his Petition for Review before filing a complaint in district court.⁵ If we grant Complainant's request to dismiss his Petition for Review before he files a complaint in district court, Complainant's only recourse may be to instead file an appeal with the appropriate United States court of appeals.⁶ The court of appeals will not review Complainant's case de novo. Rather, it will affirm the Secretary's final decision if it

² 18 U.S.C. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114(a). A complainant may not pursue a SOX action de novo in federal district court if the Department's delay in issuing a final decision was due to the bad faith of the complainant. 18 U.S.C. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114(a).

³ 29 C.F.R. § 1980.114(c).

⁴ *Id.* § 1980.111(c). The Department retains jurisdiction over the SOX claim unless and until a complainant files a de novo action in federal court, or the Secretary issues a final decision.

⁵ *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 was 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 emphasize that the Board is not the tribunal responsible for deciding whether a federal district court would have jurisdiction over Complainant's 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.

⁶ 29 C.F.R. § 1980.112(a), (b).

is supported by substantial evidence and is not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”⁷

SOX’s regulations give the ARB the discretion to decide whether to grant a petitioner’s request to withdraw a petition for review.⁸ 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.”⁹ Pursuant to the authority granted to the Board by these regulations, and in recognition of Complainant’s pro se status, his failure to file an Opening Brief, his expressed desire to exercise his right to proceed with a de novo action in federal district court, and the potential consequences of granting Complainant’s request for dismissal before he actually files a complaint in federal district court, we conclude that immediately granting Complainant’s request to dismiss 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 order that this appeal will be dismissed thirty (30) days after the issuance of this Notice.¹⁰ We conclude that this serves the interests and considerations expressed above, while also balancing the Board’s interest in achieving orderly and expeditious disposition of cases.¹¹ If Complainant files a complaint in federal district court before the Board grants his request to dismiss his Petition for Review, he

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

⁸ 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.”).

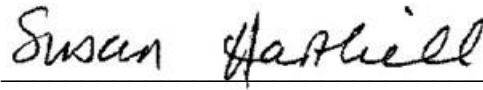
⁹ *Id.* § 1980.115.

¹⁰ See *Ramos v. Globant S.A.*, ARB No. 2022-0042, ALJ No. 2022-SOX-00004, slip op. at 5-6 (ARB Sept. 9, 2022) (Notice of Order Granting Complainant’s Request to Withdraw Petition for Review) (giving notice that complainant’s appeal would be dismissed in forty-five days where complainant indicated intent to pursue de novo review of SOX claims); *Jordan v. Sprint Nextel Corp.*, ARB Nos. 2010-0113, 2011-0020, ALJ Nos. 2006-SOX-00098, slip op. at 5 (ARB June 29, 2012) (giving notice that complainant’s appeal would be dismissed in thirty days where complainant indicated intent to pursue de novo review of some, but not all, of SOX claims).

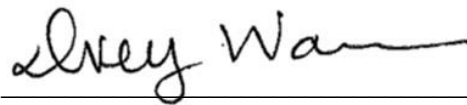
¹¹ See *Ramos*, ARB No. 2022-0042, slip op. at 5-6 (internal quotation and citation omitted).

must file a copy of the file-stamped complaint with the Board within seven days of filing.¹²

SO ORDERED.



SUSAN HARTHILL
Chief Administrative Appeals Judge



IVEY S. WARREN
Administrative Appeals Judge

¹² 29 C.F.R. § 1980.114(c). “A copy of the complaint also must be served on the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.” *Id.*