



NICK GRYGA,

ARB CASE NO. 2018-0017

COMPLAINANT,

ALJ CASE NO. 2017-SOX-00049

v.

DATE: July 3, 2019

HENKELS & MCCOY, INC.,

RESPONDENT.

Appearances:

For the Complainant:

Joseph Y. Ahmad, Esq.; Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C.; Houston, Texas

For the Respondent:

Sarah E. Bouchard, Esq.; and Vishal H. Shah, Esq.; Morgan, Lewis & Bockius LLP; Philadelphia, Pennsylvania

ORDER DISMISSING COMPLAINT

On June 20, 2017, the Complainant, Nick Gryga, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that the Respondent, Henkels & McCoy, Inc., retaliated against him in violation of the employee protection provisions of the Sarbanes-Oxley Act of 2002 (SOX)¹ and its implementing

¹ 18 U.S.C. § 1514A (2010).

regulations.² OSHA dismissed the complaint after investigation because neither the Respondent nor Gryga is covered under the SOX, and that there was no reasonable cause to believe that the Respondent violated the SOX. Gryga requested review of OSHA's determination before a departmental Administrative Law Judge (ALJ), who subsequently granted the Respondent's motion to dismiss the matter on December 11, 2017.

On December 26, 2017, Gryga filed a petition for review with the Administrative Review Board, which the Board accepted for review on January 9, 2018.³ Before the Board had issued a final decision in this matter, Gryga apparently filed an action on February 20, 2019, for de novo review of the matter in a United States district court⁴ as authorized by statute and regulation.⁵ The Board only learned of this filing four months later when, on June 18, 2019, counsel for the Respondent informed the Board of the filing and provided file-stamped copies of the initial and amended complaints.

Notwithstanding the failure of the Complainant's counsel to comply with the regulatory requirement to file "a copy of the file-stamped complaint" with the ARB,⁶ it is evident that the Board no longer has jurisdiction to adjudicate this appeal. Accordingly, we hereby **DISMISS** Gryga's petition for

² 29 C.F.R. Part 1980 (2016).

³ The Secretary of Labor has delegated to the Board authority to issue final agency decisions under the SOX. Secretary's Order 01-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13072 (Apr. 3, 2019).

⁴ The Board takes official notice that Gryga filed his complaint on February 20, 2019, in the United States District Court for the Northern District of Illinois. *Gryga v. Henkels & McCoy Group, Inc., et al*, Case No. 1:19-cv-01276 (N.D. Ill.).

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

⁶ 29 C.F.R. § 1980.114(c).

review and underlying complaint without benefit of further briefs in this matter.

FOR THE ADMINISTRATIVE REVIEW BOARD:

William T. Barto
Chief Administrative Law Judge

Note: Questions regarding any case pending before the Board should be directed to the Board's staff. Telephone: (202) 693-6200, Facsimile: (202) 693-6220