



In the Matter of:

PETER LINDNER,

ARB CASE NO. 2018-0066

COMPLAINANT,

ALJ CASE NO. 2018-SOX-00002

v.

DATE: January 28, 2020

CITIBANK, N.A.,

RESPONDENT.

Appearances:

For the Complainant:

Peter Lindner; *pro se*; New York, New York

For the Respondent:

Robert M. Tucker, Esq.; *Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*; New York, New York

Before: Thomas H. Burrell, *Acting Chief Administrative Appeals Judge*;
James A. Haynes and Heather C. Leslie, *Administrative Appeals Judges*

FINAL DECISION AND ORDER

PER CURIAM. This case arises under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A (2010) (SOX), as amended, and its implementing regulations at 29 C.F.R. Part 1980 (2018). Complainant Peter Lindner filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that a subsidiary of Respondent Citibank, N.A. violated the SOX by refusing to hire him for employment.

After an investigation, OSHA determined that Citibank had not violated the SOX. Lindner objected and requested a hearing before an Administrative Law Judge (ALJ). On August 8, 2018, the ALJ issued an “Order Dismissing Complaint,” (Order) dismissing Lindner’s SOX claim.¹ The ALJ noted that although Lindner was a pro se litigant, his repeated failures to engage in discovery and comply with procedural orders warranted dismissal of his complaint.² Lindner appealed the ALJ’s Order to the Board.

JURISDICTION AND STANDARD OF REVIEW

The ARB has jurisdiction to review the ALJ’s SOX decision under Secretary’s Order No. 01-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13,072 (Apr. 3, 2019); 29 C.F.R. Part 1980.110. We review an ALJ’s imposition of discovery sanctions on an abuse of discretion standard.³

¹ Lindner filed a separate complaint alleging that Citibank violated the Consumer Financial Protection Act of 2010 (CFPA) when it eliminated a position he held pursuant to a contract. The ALJ, finding that the complaint in that case involved questions of law and fact related to the case before us, consolidated the two cases. *See* October 27, 2017 Order Cancelling Hearing, Order Compelling Discovery, and Order Consolidating Cases [2018-SOX-00002 and 2017-CFP-00007]. The ALJ bifurcated the cases to accommodate an interlocutory appeal of an issue in the CFPA case. The interlocutory appeal is pending before the Board and will be addressed in a separate opinion.

² *See, e.g.*, December 22, 2017 Omnibus Order and Order Rescheduling Hearing (ordering Lindner to comply with discovery requests, deadlines and other orders); April 5, 2018 Order Denying Complainant’s Continuance Request (denying Lindner’s “Motion in Short Order for Second or Possibly First Request for Delay Until Citi Turns Over Plaintiff Discovery Documents”); April 11, 2018 Order Reiterating Discovery Deadlines Order Providing Precise Hearing Dates (directing Lindner to “file responses to Respondent’s Interrogatories and Document Requests”); May 11, 2018 Order Granting in Part and Denying in Part Complainant’s Motion to Delay Dates Due to Running for Congress (ordering Lindner “to submit responses to Respondent’s Interrogatories” and that “[f]ailure to comply will result in this matter being dismissed.”); June 22, 2018 Order Denying Complainant’s Continuance Request (describing Lindner’s multiple extension requests and stating that “[f]ailure to comply with this or Order or lack of compliance with my May 11, 2018 Order will result in a dismissal of this claim.”).

³ *Butler v. Anadarko Petroleum Corp.*, ARB No. 12-041, ALJ No. 2009-SOX-001, slip op. at 2 (ARB June 15, 2012).

DISCUSSION

Failure to comply with a judge's order may result in sanctions, including dismissal of the proceeding in whole or in part.⁴ An ALJ's power to dismiss a case for lack of prosecution arises from the control necessarily vested in courts to manage their affairs so as to achieve the orderly and expeditious disposition of cases.⁵ ALJs must exercise their discretion regarding this power discreetly, fashioning appropriate sanctions for conduct that abuses the judicial process.⁶

The record supports the ALJ's decision to dismiss Lindner's SOX case. The ALJ repeatedly warned Lindner of the consequences of his failure to comply with the ALJ's orders, including dismissal of his complaint. On appeal Lindner has failed to present any argument that compels us to reverse the ALJ's ruling. Accordingly, we hereby **ADOPT** the ALJ's Order, attach it to this document, and **DENY** Lindner's complaint.

SO ORDERED.

⁴ 29 C.F.R. § 18.57(b).

⁵ *James v. Suburban Disposal Inc.*, ARB No. 10-037, ALJ No. 2009-STA-071, slip op. at 5 (ARB Mar. 12, 2010) (citing *Dorman v. Chinook Charter Servs.*, ARB No. 08-011, ALJ No. 2007-STA-028, slip op. at 2 (ARB Feb. 19, 2009) (citing *Link v. Wabash R. R. Co.*, 370 U.S. 626, 629-30 (1962))).

⁶ *Id.* (citing *Dorman*, ARB No. 08-011, slip op. at 2).