



IN THE MATTER OF:

**KRISHNAMURTHY,
SIVAKUMAR,**

COMPLAINANT,

v.

**COGNIZANT TECHNOLOGY
SOLUTIONS CORP.,¹**

RESPONDENT.

ARB CASE NO. 2019-0056

ALJ CASE NO. 2018-SOX-00024

DATE: January 21, 2020

Appearances:

For the Complainant:

Krishnamurthy Sivakumar, *pro se*, T. Nagar, Chennai, India

For the Respondent:

**A. Klair Fitzpatrick, Esq., *Morgan, Lewis & Bockius LLP*,
Philadelphia, Pennsylvania**

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

FINAL DECISION AND ORDER

¹ The caption reflects the Respondent's company name. The Respondent asserts that it never employed the Complainant but that a foreign subsidiary, Cognizant Technology Solutions India Private Limited, did. Respondent's Initial Statement (Oct. 17, 2018) at 2.

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). On March 25, 2018, the Complainant filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that the Respondent subjected him on December 21, 2015, to adverse actions including termination/lay off; negative performance evaluation, and harassment/intimidation, in violation of the SOX. Whistleblower Online Complaint (March 25, 2018). Subsequent to an investigation, OSHA dismissed the complaint as it had not been filed within the statutorily-imposed limitation that a SOX complaint “shall be commenced not later than 180 days after the date on which the violation occurs, or after the date on which the employee becomes aware of the violation,” 18 U.S.C. § 1514A(b)(2)(D). OSHA Determination Letter (April 27, 2018). On May 3, 2018, the Complainant objected to OSHA’s determination and requested a hearing before an Administrative Law Judge (ALJ). The ALJ was assigned.

On October 23, 2018, the Respondent filed a Motion to Dismiss, with exhibits, arguing that the complaint should be dismissed because, (1) it is time-barred under the statutorily-imposed 180 day limitation at 18 U.S.C. § 1514A(b)(2)(D), which alone warrants dismissal under 29 C.F.R. § 1514A(b)(2)(D), and the Complainant admits that the complaint is untimely, *see* Complainant’s Initial Statement at 2; (2) it seeks extraterritorial application of the SOX which does not apply because the Complainant was employed by an Indian company in India and all of the events complained of took place in India, and (3) it fails to state a claim upon which relief can be granted. Motion to Dismiss (Oct. 23, 2018). The Complainant, self-represented, filed a response to the motion and submitted documents, including a document purporting to show that he complained to the Indian Government in May 2016, in a single sentence that Cognizant Technology Solutions India Private Limited had violated the SOX. Counter (Oct. 24, 2018). The ALJ then issued his Order That Complainant Show Cause Why Respondent’s Motion to Dismiss Should Not Be Granted (Oct. 30, 2018). The Complainant filed a response on November 16, 2018, submitting documents.

The ALJ issued his Decision and Order Dismissing Complaint (Apr. 24, 2019). The ALJ found that the complaint was time-barred and that equitable tolling of the 180-day limitations period was not appropriate. The

Complainant has appealed to the Administrative Review Board (ARB).

The Secretary of Labor has delegated to the ARB the authority to issue final agency decisions under the SOX and its implementing regulations at 29 C.F.R. Part 1980. Secretary's Order 01-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13072 (Apr. 3, 2019).

We consider the threshold determination of timeliness based on the statutorily-imposed 180-day limitations period. An employee alleging employer retaliation in violation of the SOX must demonstrate that he suffered an adverse employment action which occurred within the statutorily-imposed 180-day limitations period preceding the filing of the complaint alleging such a violation. Therefore, an employee must file a complaint within 180-days after the occurrence of the alleged SOX violation or when the employee becomes aware of it. 18 U.S.C. § 1514A(b)(2)(D).

The ALJ found that application of the 180-day limitations period bars relief for the Complainant and application of equitable tolling is not appropriate on the facts of this case. The ALJ specifically indicated,

Complainant's multiple filings have been considered in their entirety, and even construing the record "liberally in deference" to his unrepresented status, I still find them insufficient to avoid dismissal. Complainant's filings contain no credible factual allegation or legally sufficient argument supporting a finding that the long-expired statute of limitation should be tolled on equitable grounds. Stated differently, it is uncontroverted that Complainant's complaint was filed well beyond the applicable time to file without legal or equitable justification.

In sum, I find that Respondent's timeliness argument is well-founded. No filing associated with the complaint before me occurred within the period of time allowed, nor has Complainant met his burden of justifying the application of equitable tolling principles.

D. & O. at 9. For the reasons set forth by the ALJ, we agree with the ALJ

that the Complainant cannot avoid dismissal of his March 25, 2018, complaint because it is time-barred.

Further, in determining whether the Board should permit the adjudication of an otherwise untimely complaint, the Board has recognized four principal situations in which equitable modification of filing deadlines may apply: (1) respondent has actively misled the complainant regarding the cause of action; (2) complainant has in some extraordinary way been prevented from filing his or her action; (3) complainant has raised the precise statutory claim in issue but has done so in the wrong forum; and (4) respondent's own acts or omissions have lulled the complainant into foregoing prompt attempts to vindicate his or her rights. *See Brown v. Synovus Fin. Corp.*, ARB No. 17-037, ALJ No. 2015-SOX-00018, slip op. at 1 (ARB May 17, 2017). Our review of the record discloses none of these situations applies here. Accordingly, we agree with the ALJ's conclusion that there are no grounds for an equitable extension of the statutory filing deadline of 180 days, to avoid dismissal. 29 C.F.R. § 18.70(c).

We **AFFIRM** the ALJ's decision and order and the Complainant's complaint is **DISMISSED**.

SO ORDERED.