



In the Matter of:

LOUIS LORENZETTI,

ARB CASE NO. 2020-0055

COMPLAINANT

ALJ CASE NO. 2020-SOX-00012

v.

DATE: August 24, 2021

WORLDPAY, INC.,

RESPONDENT.

Appearances:

For the Complainant:

Louis Lorenzetti; *pro se*; Mason, Ohio

For the Respondent:

David A. Nenni; *Jackson Lewis LLP*; Cincinnati, Ohio

Before: James D. McGinley, *Chief Administrative Appeals Judge*, Randel K. Johnson and Stephen M. Godek, *Administrative Appeals Judges*

DECISION AND ORDER

PER CURIAM. This matter arises under the Corporate Fraud and Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act (SOX).¹ Louis Lorenzetti (Complainant) filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Worldpay, Inc. (Respondent) violated SOX by terminating his employment in retaliation for acts protected by SOX. OSHA dismissed the complaint and Complainant appealed to the Office of Administrative Law Judges (OALJ). The Administrative Law Judge (ALJ) dismissed the case on July 2, 2020, in an Order Denying Second Motion for Extension of Time and Granting Motion to Dismiss

¹ 18 U.S.C. § 1514A, as amended, and its implementing regulations, 29 C.F.R. Part 1980 (2020).

(“Order to Dismiss”). Complainant timely appealed to the Administrative Review Board (ARB or the “Board”) on July 15, 2020.

For the following reasons, we affirm the ALJ’s Order to Dismiss.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the Board to issue agency decisions in this matter.² The ARB reviews an ALJ’s order on motions to dismiss de novo.³

DISCUSSION

Complainant is a former information technology employee of Respondent. In March 2018, Respondent terminated Complainant’s employment. Complainant timely contacted OSHA, claiming that he was terminated in retaliation for protected activity. OSHA proceeded to investigate Complainant’s claim. On December 10, 2019, OSHA sent Complainant and Respondent its decision finding no violation of the whistleblower protection provisions of SOX.⁴ On January 15, 2020, Complainant filed an appeal with OALJ.

On April 15, 2020, Respondent filed a Motion to Dismiss, arguing that Lorenzetti’s appeal to OALJ was not timely. The ALJ gave Complainant until May 1, 2020, to respond to Respondent’s motion. On May 4, 2020, the ALJ issued an Order Granting Extension of Time to File Brief in Opposition to Motion to Dismiss, citing a letter received by Complainant asking for more time to retain an attorney. The ALJ granted Complainant a two month extension to file a brief in opposition (to July 1, 2020). In his order, the ALJ stated that no additional extensions of time would be granted.

On July 1, 2020, Complainant asked for more time to hire an attorney. On July 2, 2020, the ALJ issued the Order to Dismiss.

In his Order to Dismiss, the ALJ first denied Complainant’s request for another extension to file a response to Respondent’s Motion to Dismiss. In doing so, he cited the prior extension’s warning that no more extensions would be granted. He then proceeded to the merits of Respondent’s argument. The ALJ held that 29

² 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. 13186 (Mar. 6, 2020).

³ *Johnson v. The Wellpoint Cos., Inc.*, ARB No. 2011-0035, ALJ No. 2010-SOX-00028 (ARB Feb. 25, 2013).

⁴ 18 U.S.C. § 1514A.

C.F.R. § 1980.106, requires a complainant to object to OSHA's findings by filing an appeal within 30 days of receipt of OSHA's determination. If no appeal is filed, OSHA's findings become final 30 days after receipt.⁵ The ALJ further found that OSHA appropriately apprised Complainant of his right to appeal and the timeline to do so. The ALJ found that it took three days for OSHA's findings to reach Complainant. Pursuant to 29 C.F.R. § 1980.105, OSHA's findings became final 30 days after receipt, on January 13, 2020. Complainant did not file his appeal until January 15, 2020, two days after the deadline.⁶ The ALJ granted Respondent's motion to dismiss.

Parties may file a motion to dismiss before a hearing, along with supporting affidavits, declarations and other proof to establish the basis for relief pursuant to 29 C.F.R. § 18.33(c). The regulations allow an ALJ to treat motions to dismiss for untimeliness as unopposed when the opposing party fails to respond.⁷ Here, the Complainant responded to Respondent's motion in form, but not in substance. Both of the responses that Complainant filed were requests for additional time. Upon receiving the first request, the ALJ granted Complainant a generous two-month extension and warned Complainant another extension would not be granted.⁸ Upon receiving the second request for extension, the ALJ denied the motion, examined the available record, and ruled in favor of Respondent. Complainant's second request for additional time was not responsive to Respondent's motion. Instead of providing evidence that his appeal was timely, Complainant focused on his inability to retain counsel, and Respondent's delay in filing the motion to dismiss. Complainant failed to respond to the substance of Respondent's motion – that his appeal was untimely – in both of his responses, and he failed to provide the required supporting documents to show that his appeal was, in fact, timely.

In ruling on Respondent's motion, the ALJ examined the available record and determined that Complainant's appeal was untimely, while noting that he afforded Complainant ample time to respond to Respondent's motion. Complainant never filed a substantive response to the motion, and the ALJ's Order to Dismiss is consistent with the regulations which allow the ALJ to grant an unopposed motion.

⁵ 29 C.F.R. § 1980.105.

⁶ Order Denying Second Motion For Extension Of Time And Granting Motion To Dismiss (“Order to Dismiss”) at 2.

⁷ 29 C.F.R. § 18.70(c).

⁸ The Order stated in bold and all caps, “**NO FURTHER EXTENSIONS OF TIME WILL BE PERMITTED.**”

CONCLUSION

Accordingly, we **AFFIRM** the ALJ's Order Denying Second Motion for Extension of Time and Granting Motion to Dismiss.

SO ORDERED.