

§ 1979.111

Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the administrative law judge shall become the final order of the Secretary unless the Board, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the administrative law judge shall be inoperative unless and until the Board issues an order adopting the decision, except that a preliminary order of reinstatement shall be effective while review is conducted by the Board. The Board will specify the terms under which any briefs are to be filed. The Board will review the factual determinations of the administrative law judge under the substantial evidence standard.

(c) The final decision of the Board shall be issued within 120 days of the conclusion of the hearing, which shall be deemed to be the conclusion of all proceedings before the administrative law judge—*i.e.*, ten business days after the date of the decision of the administrative law judge unless a motion for reconsideration has been filed with the administrative law judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. The final decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, even if the Assistant Secretary is not a party.

(d) If the Board concludes that the party charged has violated the law, the final order shall order the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the Board shall assess against

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the named person all costs and expenses (including attorney's and expert witness fees) reasonably incurred.

(e) If the Board determines that the named person has not violated the law, an order shall be issued denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was brought in bad faith, the Board may award to the named person a reasonable attorney's fee, not exceeding \$1,000.

Subpart C—Miscellaneous Provisions

§ 1979.111 Withdrawal of complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings or preliminary order, a complainant may withdraw his or her complaint under the Act by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary will then determine whether the withdrawal will be approved. The Assistant Secretary will notify the named person of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement shall be approved in accordance with paragraph (d) of this section.

(b) The Assistant Secretary may withdraw his or her findings or a preliminary order at any time before the expiration of the 30-day objection period described in § 1979.106, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or order will begin a new 30-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether the withdrawal will be approved. If the objections are withdrawn because of settlement, the settlement shall be approved in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, and before the findings and/or order are

objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the named person agree to a settlement.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement shall be filed with the administrative law judge or the Board, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board, shall constitute the final order of the Secretary and may be enforced pursuant to § 1979.113.

§ 1979.112 Judicial review.

(a) Within 60 days after the issuance of a final order by the Board under § 1979.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Board is not subject to judicial review in any criminal or other civil proceeding.

(b) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the Board to the appropriate court pursuant to the rules of the court.

§ 1979.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

§ 1979.114 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the administrative law judge or the Board on review may, upon application, after three days notice to all parties and interveners, waive any rule or issue any orders that justice or the administration of the Act requires.

PART 1980—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 806 OF THE CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY ACT OF 2002, TITLE VIII OF THE SARBANES-OXLEY ACT OF 2002

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- 1980.112 Judicial review.
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- 1980.114 District Court jurisdiction of discrimination complaints.
- 1980.115 Special circumstances; waiver of rules.

AUTHORITY: 18 U.S.C. 1514A; Secretary of Labor's Order No. 5-2002, 67 FR 65008 (October 22, 2002).

SOURCE: 68 FR 31864, May 28, 2003, unless otherwise noted.