

DOL Decision Confirms Extraterritorial Limits of SOX Whistleblower Provision

Proskauer Whistleblower Defense Blog on April 6, 2020

As we [previously reported](#), the Department of Labor's (DOL) Administrative Review Board has twice held that Sarbanes Oxley's anti-retaliation provision does not apply extraterritorially. See [Hu v. PTC, Inc.](#), ARB Case No. 2017-0068 (Sept. 18, 2019); [Perez v. Citigroup, Inc.](#), ARB Case No. 2017-0031 (Sept. 30, 2019). An Administrative Law Judge (ALJ) of the DOL recently applied this precedent and dismissed a former in-house attorney's whistleblower claims because he worked entirely outside of the United States. [Garvey v. Morgan Stanley](#), No. 2017-SOX-00030 (ALJ Feb. 13, 2020).

Background

Complainant Christopher Garvey worked entirely in Hong Kong for a foreign subsidiary of a U.S. company. Garvey claimed that he was constructively discharged after he objected to certain conduct that he believed was in violation of the U.S. Foreign Corrupt Practices Act and other U.S. securities laws. Garvey filed suit under SOX's anti-retaliation provision (Section 806), and the company moved to dismiss the action on the grounds that the ARB's recent decisions in *Hu* and *Perez* precluded extraterritorial claims under Section 806.

Ruling

The ALJ determined that Garvey's claims were extraterritorial in nature and therefore were subject to dismissal under *Hu* and *Perez*. Comparing the facts before him to those in *Hu*, the ALJ determined that Garvey was similarly situated to the *Hu* complainant – both were foreign-based employees of foreign subsidiaries of U.S. companies. The ALJ explained that “the location of the employee’s permanent or principal worksite is the key factor to consider when deciding whether a claim is a domestic or extraterritorial application of Section 806,” and other factors “such as the employee’s U.S. citizenship” are “less critical, if not irrelevant” to determining whether Section 806 applies. Because Garvey’s permanent or principal worksite was in Hong Kong, the ALJ determined that Section 806 could not apply to his claims.

Implications

In the wake of *Hu* and *Perez*, the *Garvey* decision confirms that SOX’s anti-retaliation provision does not apply extraterritorially.