

4th Circuit Upholds SOX Whistleblower Protections

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The 4th Circuit Court of Appeals – which hears appeals from federal courts in Maryland, Virginia, West Virginia, North Carolina and South Carolina – recently issued an opinion affirming a sizeable award to an employee who was retaliated against in violation of the [Sarbanes-Oxley Act \(SOX\)](#). The case, *Deltek, Inc. v. Department of Labor, Administrative Review Board*, 2016 WL 2946570 (4th Cir. May 20, 2016), involved a financial analyst who was fired by her employer, Deltek, after she reported her belief that coworkers were engaged in billing fraud against a telecommunications vendor to hide budget shortfalls.

About the Deltek SOX Whistleblower Case

The employee reported the fraudulent billing practices to the company’s general counsel and audit committee, as well as the [Securities Exchange Commission \(SEC\)](#). Shortly after she did so, she started to experience mistreatment at the hands of coworkers and supervisors. During her placement on paid leave, the employee filed a SOX retaliation complaint with the [Occupational Safety and Health Administration \(OSHA\)](#) and began to negotiate a settlement for her departure with the company. Negotiations failed, however, and Deltek then terminated her. The employee subsequently amended her SOX complaint to allege that her termination was further retaliation for her reports about fraudulent billing practices.

The Administrative Law Judge (ALJ) who heard the SOX complaint ruled that Deltek was liable for retaliation and ordered the company to pay the employee backpay and benefits, including tuition reimbursement benefits, and four years of front pay. Deltek appealed the decision to the [Department of Labor Administrative Review Board \(ARB\)](#). The ARB upheld the decision and Deltek appealed again, to the 4th Circuit Court of Appeals.

Deltek’s Arguments Before the 4th Circuit

The company raised three arguments before the federal appeals court, all of which the court rejected.

1. Questioning the whistleblower’s “reasonable belief” – Deltek first argued that the employee did not engage in protected activity under SOX because she did not have the education or work experience required to form a “[reasonable belief](#)” that fraud was taking place in her department. The court found that the ALJ and ARB relied on substantial evidence showing that the employee had, in fact, based her belief on discussions with a colleague who did have experience with the billing process and who agreed that their department was abusing the billing dispute process to manipulate its operating budget.

2. Questioning whistleblowing as a “contributing factor” – Deltek next argued that the employee had failed to show that her whistleblowing activity was a “[contributing factor](#)” in her termination. The court found that the ALJ and ARB properly determined that the employee proved that Deltek’s reason for her termination – that she had returned to the workplace after being fired and was disruptive –

was false. In making this ruling, the court noted that the standard for causation in SOX retaliation cases is relatively low for employees. As the court explained, if an employee can show that an adverse action occurred soon after her protected activity and the reason given by the employer for its action is proven to be pretextual, the standard is met. Importantly, the court also rejected Deltek's argument that it was not liable for retaliation because it would have terminated the employee in any event because she had emailed herself documents relevant to her claims, in violation of company policy. The court found that the employee had only obtained documents relevant to her retaliation claim that she believed were being or might be destroyed by the company, and thus she had not committed a fireable offense by retaining them.

3. Questioning the award amount – Finally, Deltek argued that the employee was not entitled to four years of front pay and tuition reimbursement benefits, in addition to back pay, because she had not provided enough evidence to support the award. The ALJ and ARB had determined that four years of front pay and tuition benefits were appropriate because the employee was not likely to find equivalent work in her field without the college degree that she had planned to obtain if she had remained at Deltek and received their tuition assistance. The appellate court agreed, finding that front pay and tuition benefits were appropriate to put the employee in the same position that she would have been had the company not retaliated against her.

The Value of SOX Whistleblower Protections

Taken as a whole, the *Deltek* decision provides strong support for whistleblowers by reiterating that the [legal standards under SOX](#) (and related statutes) are intended to be meaningful protections for employees and employers who violate the law must compensate employees fully for the losses they've endured. While the *Deltek* decision has no binding authority in the 4th Circuit because it was issued as an unpublished opinion, the case can provide beneficial persuasive authority for retaliation claims in the jurisdiction and beyond.