

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

MADHURI TRIVEDI,

ARB CASE NO. 2022-0026

COMPLAINANT,

ALJ CASE NO. 2022-SOX-00005

v.

DATE: October 28, 2022

**GENERAL ELECTRIC and
GE HEALTHCARE,**

RESPONDENTS.

Appearances:

For the Complainant:

Madhuri Trivedi; *pro se*; Boston Massachusetts

For the Respondents:

**Tomasita L. Sherer, Esq. and Cassandra Beckman Widay, Esq.;
Dentons US LLP; New York, New York**

**Before: HARTHILL, Chief Administrative Appeals Judge, and BURRELL,
and PUST, Administrative Appeal Judges**

ORDER DENYING RECONSIDERATION

PUST, Administrative Appeals Judge:

This case arises under the whistleblower protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act (SOX), 18 U.S.C. § 1514A, its implementing regulations at 29 C.F.R. Part 1980, the Consumer Financial Protection Act of 2010 (CFPA), Section 1057 of the Dodd-Frank Wall Street Reform, and Consumer Protection Act of 2010, 12 U.S.C. § 5567, and the implementing regulations at 29 C.F.R. Part 1985. Madhuri Trivedi (Complainant) filed a whistleblower complaint against General

Electric and GE Healthcare (Respondents) for alleged retaliation.¹ The Administrative Law Judge (ALJ) issued an Order Denying Complaint for Failure to Timely File (Order), finding that Complainant had missed the 180-day filing deadline by several years and determining that the legal test for equitable tolling had not been met.² Complainant appealed the ALJ's decision to the Administrative Review Board (Board).³ Upon review of Complainant's briefs and exhibits totaling 669 pages, plus consideration of the record of the proceedings below, on August 24, 2022, the Board issued a Decision and Order (D. & O.). In the D. & O., the Board affirmed the ALJ's determination that Complainant had failed to establish any sufficient grounds for equitable tolling and dismissed her complaint.⁴

On September 14, 2022, Complainant filed a 113-page petition for reconsideration and rehearing en banc⁵ and a 960-page appendix with attachments.⁶ On September 16, 2022, Respondents filed a motion to strike all of Complainant's September 14, 2022 filings.⁷ On October 4, 2022, Respondents filed a response to Complainant's petition for reconsideration.⁸

The Board is authorized to reconsider a previously issued decision upon the filing of a motion for reconsideration within a reasonable time of the date on which the Board issued the decision.⁹ In considering whether to reconsider a prior decision, the Board requires the movant to sufficiently demonstrate any of the following:

- (i) material differences in fact or law from that presented to the Board of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the Board's decision;

¹ *Trivedi v. Gen. Elec. and GE Healthcare*, ARB No. 2022-0026, ALJ No. 2022-SOX-00005, slip op. at 4 (ARB Aug. 24, 2022).

² *Id.* at 5.

³ *Id.*

⁴ *Id.* at 11.

⁵ Complainant's Petition for Rehearing and Rehearing En Banc and Motion for Reconsideration (Sept. 14, 2022).

⁶ Appendix/Attachments for Complainant's Petition for Rehearing and Rehearing En Banc and Motion for Reconsideration (Sept. 14, 2022).

⁷ Respondent's Motion to Strike at 1 (Sept. 16, 2022).

⁸ Respondent's Brief in Opposition to Complainant's Motion for Reconsideration (Oct. 4, 2022).

⁹ *Klein v. Bank of Am.*, ARB No. 2022-0016, ALJ No. 2020-SOX-00039, slip op. at 2 (ARB May 19, 2022) (citing *Henrich v. Ecolab, Inc.*, ARB No. 2005-0030, ALJ No. 2004-SOX-00051, slip op. at 11 (ARB May 30, 2007)).

(iii) a change in the law after the Board's decision, [or] (iv) failure to consider a material fact presented to the Board before its decision.^[10]

When determining whether to consider new evidence, the Board relies on the standard contained in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges,¹¹ which provides that “[n]o additional evidence may be admitted unless the offering party shows that new and material evidence has become available that could not have been discovered with reasonable diligence before the record closed.”¹² The Board has repeatedly upheld this standard.¹³

Complainant asserts that we should reconsider our decision for several reasons. None of her proffered reasons meet any element of the required test.

First, Complainant contends that she meets the burden of establishing a continued violation and argues that this provides a sufficient basis for extending the limitations deadline. As the basis of this assertion, Complainant points to her allegation that Respondents removed a section containing information related to her whistleblower claim from their filings with the Securities and Exchange Commission (SEC) in 2019, as well as other alleged actions which she insists constitute ongoing securities fraud.¹⁴ Complainant also asserts that she has an active and ongoing claim with the SEC's enforcement division.¹⁵ The Board has already determined that Complainant's securities fraud allegations do not support

¹⁰ *Klein*, ARB No. 2022-0016, slip op. at 2-3 (citing *Rosenfeld v. Cox Enters., Inc.*, ARB No. 2016-0026, ALJ No. 2014-SOX-00033, slip op. at 2-3 (ARB May 26, 2017)).

¹¹ 29 C.F.R. Part 18.

¹² 29 C.F.R. § 18.90(b)(1).

¹³ See *Henrich v. Ecolab, Inc.*, ARB No. 2005-0030, ALJ No. 2004-SOX-00051, slip op. at 18 (ARB May 30, 2007) (Rejecting the complainant's deposition as grounds for reconsideration as it could not have been considered newly discovered evidence); *Childs v. DimensionalMechanics, Inc.*, ARB No. 2021-0001, ALJ No. 2017-LCA-00008, slip op. at 2 (ARB Sept. 30, 2021) (Rejecting newly submitted evidence as the complainant was unable to show that it could not have been discovered with reasonable diligence before the record closed); *Aityahia v. Air Line Pilots Assoc.*, ARB No. 2019-0037, ALJ No. 2018-AIR-00042, slip op. at 3 n.2 (ARB May 19, 2020) (Same); *Baiju v. Fifth Ave. Comm.*, ARB No. 2010-0094, ALJ No. 2009-LCA-00045, slip op. at 4 (ARB May 31, 2012) (Order denying motion for reconsideration where the complainant “failed to establish that the evidence was newly discovered and material and that it was not readily available prior to the closing of the record by the ALJ.”).

¹⁴ Complainant's Motion for Reconsideration at 1-3, 15, 62, 75-77, 80, 88-89, 93, 97-108.

¹⁵ *Id.* at 7.

application of the continuing violations doctrine.¹⁶ Complainant has not alleged new material facts or a change in the law that would support reconsideration of the D. & O. on this point.

Second, Complainant contends that the Board erred in refusing to apply the doctrine of equitable tolling based on her allegations that she: (1) was not aware she could file an OSHA claim until May 3, 2014¹⁷ and (2) raised her claim in the wrong forum by filing a claim with the Food and Drug Administration (FDA) on December 12, 2013.¹⁸ Again, these contentions fail to meet any of the four required elements to support reconsideration. The Board addressed these arguments earlier and determined that Complainant's lack of knowledge does not merit equitable tolling,¹⁹ nor do her "allegations of SOX, CFPA, or other whistleblower retaliation [in her FDA filing] relate[] to her termination."²⁰ Therefore, neither of these allegations raise new facts or legal theories, and neither justify granting Complainant's motion to reconsider.

Lastly, Complainant contends that OSHA, OALJ, and the Board have mismanaged her complaint.²¹ The Board earlier determined that this argument was meritless.²² Complainant's reraising it now as a purported basis for reconsideration is just as meritless as it does not fall within any of the four limited circumstances under which we will reconsider decisions.²³

The remainder of Complainant's arguments relate to the substantive merits of her claims. As the ALJ's Order, the Board's D.& O. and the current petition before the Board relate to the untimeliness of her complaint, the Board correctly did not, and does not, reach the substantive merits of Complainant's legal claims.

¹⁶ D. & O. at 9-10.

¹⁷ Complainant's Motion for Reconsideration at 5, 37-39.

¹⁸ Complainant's Motion for Reconsideration at 8-9, 24-25, 33-37.

¹⁹ D. & O. at 8.

²⁰ *Id.*

²¹ Complainant's Motion for Reconsideration at 1-5, 11, 18-47, 63-67, 74-75, 79, 82-83, 93-97, 104-11.

²² D. & O. at 7, 10.


²³ *McCloskey v. Ameriquest Mortg. Co.*, ARB No. 2006-0033; ALJ No. 2005-SOX-00093, slip op. at 3 (ARB Mar. 26, 2008) (denying motion for reconsideration that "consists of a rehashing of arguments the Board has already considered and rejected . . .").


In light of our denial of Complainant's petition for reconsideration, the Board does not rule on Respondents' motion to strike as it is now moot.²⁴

Accordingly, we **DENY** Complainant's Petition for Reconsideration.

SO ORDERED.²⁵


 TAMMY L. PUST
 Administrative Appeals Judge


 SUSAN HARTHILL
 Chief Administrative Appeals Judge


 THOMAS H. BURRELL
 Administrative Appeals Judge

²⁴ Although we reviewed the entirety of Complainant's brief on the instant motion, we note that we will not routinely consider briefs that violate our briefing orders and requirements. *See Boch v. J.P. Morgan Sec.*, ARB No. 2022-0029, ALJ Nos. 2020-CFP-00002, 2020-SOX-00004, slip op. at 2 (ARB June 15, 2022) ("The Board has the inherent 'authority to effectively manage its docket'" and "can 'issue sanctions, including dismissal, for a party's failure to comply with the Board's orders and briefing requirements.'") (quotations and citations omitted). This admonition extends to *pro se* parties as well. *Powers v. Pinnacle Airlines, Inc.*, ARB No. 2006-0078, ALJ Nos. 2006-AIR-00004, -00005, slip op. at 6-7 (ARB June 28, 2007) (Dismissing an appeal where a *pro se* complainant failed to comply with the Board's briefing order in part by filing an opening brief that exceeded the page limitation).

²⁵ In any appeal of this Decision and Order that may be filed, we note that the appropriately named party is the Secretary, Department of Labor, not the Administrative Review Board.