U.S. Department of Labor

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

IN THE MATTER OF:

TIMOTHY HALL,

COMPLAINANT,

v.

EASTERN PANHANDLE ANESTHESIA ASSOCIATES INC., (EPAA), and CITY HOSPITAL, INC., d/b/a BERKELEY MEDICAL CENTER (BMC),

RESPONDENTS.

ARB CASE NO. 2025-0034

ALJ CASE NO. 2023-AIR-00024
ALJ SEAN M. RAMALEY

DATE: September 15, 2026

Appearances:

For the Complainant:
Dr. Timothy Hall; *Pro Se*; Hedgesville, West Virginia

For the Respondents:
Travis F. Salisbury, Esq., and Brad D. Weiss, Esq.; *Charapp & Weiss, PLLC*; Reston, Virginia

Before JOHNSON, Chief Administrative Appeals Judge, and BURRELL, Administrative Appeals Judge

ORDER DENYING RECONSIDERATION

This case arises under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century[1] (AIR21 or the Act) and its implementing regulations.[2] Timothy Hall (Complainant) worked for Eastern

[1] 49 U.S.C. § 42121.

[2] 29 C.F.R. Part 1979 (2023).

Panhandle Anesthesia Associates, Inc. (EPAA) as an anesthesiologist. EPAA has a professional services agreement with City Hospital, Inc., d/b/a Berkeley Medical Center (BMC), and both EPAA and BMC are Respondents in this case. Complainant filed a whistleblower complaint with the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA), alleging Respondents violated AIR21 by retaliating against him for reporting safety concerns. OSHA determined Respondents are not covered by the Act. Complainant objected to OSHA's findings and requested a hearing before an Administrative Law Judge (ALJ). Both Respondents filed motions for summary judgment, which the ALJ granted. Complainant then petitioned the Administrative Review Board (ARB or Board) for review, and the Board affirmed the ALJ's order on July 9, 2026. On July 22, 2026, Complainant filed a Petition for Rehearing (Petition), which we construe as a Motion for Reconsideration of the Board's decision. For the reasons set forth below, we deny Complainant's Petition.

DISCUSSION

The Board will reconsider a decision only under limited circumstances.[3] These circumstances include but are not limited to whether the movant has demonstrated: (i) material differences in fact or law from those 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, (iii) a change in the law after the Board's decision, or (iv) failure to consider material facts presented to the Board before its decision.[4] We highlight that the foregoing circumstances are not exclusive,[5] and a complainant's inability to satisfy one is not necessarily fatal to reconsideration.[6]

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[3] *Thomas v. DuPont Specialty Prods. USA, LLC*, ARB No. 2023-0055, ALJ No. 2023-WPC-00004, slip op. at 2 (ARB Mar. 11, 2025) (Order Denying Reconsideration) (citation omitted).

[4] *Id.* (citation omitted).

[5] The ARB's governing regulations establish our authority to issue final decisions, but do not list specific grounds for reconsideration. We have granted reconsideration in additional circumstances to protect the integrity of the review process, e.g. by remedying procedural errors like mis-delivery or correcting erroneous timeliness decisions through equitable tolling, or when issues occur related to the use of the Board's electronic filing and service system.

[6] *DeVoe v. Premier Trucking, LLC*, ARB No. 2025-0056, ALJ No. 2024-STA-00090, slip op. at 2 (ARB July 1, 2025) (citation omitted).

Complainant does not assert grounds for reconsideration under procedural fairness, nor does he claim any of the first three standard circumstances. Complainant appears to rely solely on the ARB's failure to consider material facts. He asserts: (1) the Board did not consider evidence that Complainant qualifies as a protected "employee" under AIR21;[7] (2) the Board misapplied *Cobb v. FedEx Corporate Services Inc.*,[8] *Evans v. Miami Valley Hospital*,[9] and overlooked evidence that Respondents qualify as indirect air carriers;[10] (3) the Board did not review Complainant's Section 11(c) claims;[11] (4) the Board did not consider evidence that EPAA, BMC, and WVUHS are liable as joint employers;[12] (5) the Board mischaracterized the relationship between EPAA, BMC, and air carrier HealthNet;[13] and (6) the Board did not consider evidence of temporal proximity or the basis of Complainant's termination, and thus performed an incomplete review.[14]

We disagree that Complainant's arguments, viewed separately or in combination, warrant reconsideration of our previous decision, and evaluate each argument in the order they appear in his Petition.

First, Complainant argues the Board did not consider evidence that he qualifies as a protected "employee" under AIR21, and the Act's protections apply to him because he is an individual that "could be affected by an air carrier."[15] But AIR21's protections only consider retaliation by covered entities: at the time of this case, that prohibition extended to "air carrier[s]" and "contractor[s] or subcontractor[s] of an air carrier."[16] As we stated in our opinion and restate here, Respondents are not air carriers or contractors or subcontractors of an air carrier.

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7 Petition at 6-10, 22-24, 26-28.

8 *Cobb v. FedEx Corp. Servs., Inc.,* ARB No. 2012-0052, ALJ No. 2010-AIR-00024 (ARB Dec. 13, 2013).

9 *Evans v. Miami Valley Hosp.*, ARB Nos. 2007-0118, -0121, ALJ No. 2006-AIR-00022 (ARB June 30, 2009).

10 Petition at 10-16.

11 *Id.* at 16-17.

12 *Id.* at 18-22.

13 *Id.* at 22-25.

14 *Id.* at 25-26.

15 *Id.* at 6.

16 49 U.S.C. § 42121(a), (e).

Complainant wrongly argues if Respondents are covered *or* Complainant is covered, AIR21 coverage kicks in, but both Complainant and Respondents must be covered under the Act.[17] As we already determined, because Respondents are neither air carriers nor contractors or subcontractors of an air carrier, we do not need to reach the employee part of the coverage test to determine AIR21 does not apply. Thus, we did not consider Complainant's employee-status argument in our initial decision. And we do not reconsider it here.

Second, Complainant challenges our determination that Respondents are not air carriers.[18] Complainant argues we overlooked the following evidence while making our determination: (a) BMC manages a hospital helipad;[19] (b) BMC is in contact with air ambulance carrier HealthNet and prepares HealthNet patients;[20] (c) WVUHS, the shared parent company of BMC and HealthNet, is responsible for both subsidiaries' financing and operational support;[21] (d) these facts, along with the Board's previous holdings in *Cobb* and *Evans,* show that Respondents provide services to and operationally integrate with air carriers which makes Respondents "indirect air carriers."[22]

Complainant's arguments do not identify any error of law or fact warranting reconsideration. In our D. & O., the Board considered the corporate and operational relationships among BMC, EPAA, HealthNet, and their parent WVUHS, distinguished the materially different roles played by Respondents here from FedEx Services in *Cobb* or MVH in *Evans*, and thus declined to categorize Respondents as air carriers or indirect air carriers.[23] We do not repeat our previous analysis.

In his Petition, Complainant interprets *Cobb* as holding that operational or financial "integration" that is "not merely passive" between an air carrier and a

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17 D. & O. at 4 (citing 49 U.S.C. § 42121(a)).

18 Petition at 10-16.

19 *Id.* at 13.

20 *Id.* at 11, 13.

21 *Id.* at 14-17.

22 *Id.* at 11-13.

23 D. & O. at 4-7.

third party endows the third party with indirect carrier status.[24] We emphasize now that our precedent in *Cobb* only extended the general definition of air carrier—"those who hold out a transportation service to the public under which they utilize the services of a direct carrier for the actual transportation by air"[25]—to include "[subsidiary companies that provide] critical support to a parent company that operates as an air carrier engaged in air transportation."[26] In *Cobb*, FedEx had divvied up its air transportation service into different business segments. We held that FedEx Services was an indirect air carrier to FedEx Express because it provided critical functionality to FedEx Express, the direct air carrier segment. The facts of *Cobb* are unique to FedEx and that case does not readily serve as precedent for incongruous intercorporate relationships. While AIR21's definitions were intended to be broadly construed to give "full effect to the purpose underlying Section 42121," the Act's broadness is not unlimited.[27] In *Aityahia v. Aviation Academy of America*, for example, the ARB affirmed that where a flight school did not provide "vital, . . . essential"[28] or "integral[29] services necessary for [itself] or another company to provide air transportation," it could not be imputed as an indirect air carrier despite its contact with and training of pilots generally.[30] AIR21's coverage cannot reasonably extend to every entity that integrates with air carriers, their employees, or their consumers. Landlords, utility companies, dry cleaners, caterers, and rental car companies all enable air carriers' services,

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[24] Petition at 13 ("This operational integration, combined with WVUHS's ownership stake and financial guarantees for HealthNet, establishes that BMC indirectly provides air transportation services.").

[25] *Cobb*, ARB No. 2012-0052, slip op. at 9 (citations omitted).

[26] *Aityahia v. Aviation Acad. of Am.,* ARB No. 2018-0028, ALJ No. 2017-AIR-00029, slip op. at 5 (ARB Sept. 12, 2019) (per curiam) (adopting and attaching the ALJ's Ruling on Respondent's Motion to Dismiss (ALJ Ruling)).

[27] *Cobb*, ARB No. 2012-0052, slip op. at 13.

[28] *Aityahia*, ARB No. 2018-0028, slip op. at 8-9 (ALJ Ruling at 5-6).

[29] Distinguished from just *integrated* services.

[30] *Aityahia*, ARB No. 2018-0028, slip op. at 7 (ALJ Ruling at 4) (distinguishing "a flight training school with the sole purpose of educating student aircraft pilots" from services that qualify an entity as an indirect air carrier. The latter includes "the business of providing integral services necessary for [itself] or another company to provide air transportation," such as "information technology services, cargo trucking operations, and disaster and security planning" to a parent company in FedEx Services' case (citing *Cobb*, ARB No. 2012-0052, slip op. at 11)).

heliports' operation, air passengers' travel, or all the above.[31] Without a limiting principle, AIR21 would be all-encompassing, and the statutory categories of "air carrier," "contractor," and "subcontractor" would collapse.

In Respondents' case, activities like operating one of many physical landing zones used by an air carrier, interacting with an air carrier's personnel, or being part of a parent system that also owns an air carrier are separate from essential support of air transportation. In *Cobb* and *Evans*, subsidiaries' flight information technology services[32] or operation of a flight ambulance service, respectively, inextricably enabled air transportation.[33] Here, BMC primarily operates a hospital, and EPAA furnishes anesthesiology services to BMC.[34] Respondents might incidentally create departure locations, destinations, or contact with HealthNet's flights over the course of caring for patients.[35] But Respondents neither hold themselves or their services out to provide air transportation to the public. Rather, Respondents are in the practice of medicine.

Congress reinforced this limiting principle in AIR21's definition of "contractor." While Congress extended the Act's prohibition against retaliation to contractors and subcontractors of air carriers, it appreciated the expansive reach of this language and provided a definition of contractor limited to a "person that *performs safety-sensitive functions by contract for an air carrier* or commercial operator."[36] As we stated in our decision, Complainant has not provided record evidence of a safety-sensitive contract between BMC and/or EPAA and HealthNet,

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31 See *Aityahia*, ARB No. 2018-0028, slip op. at 8-9 (ALJ Ruling at 5-6) (noting how a general flight training school is still attenuated from integral business support related to air transportation); see also wider jurisprudence delimiting parties' coverage as "indirect air carriers" though parties interact with air transportation, such as *Arkin v. Trans Int'l Airlines, Inc.,* 568 F. Supp. 11, 13 (E.D.N.Y. 1982) (holding a company responsible for manufacturing, assembling, servicing, and inspecting airplane tires was not an indirect air carrier under the FAA); *Wilson v. United Air Lines*, No. 94 C 5411, 1995 WL 530653, at *3 (N.D. Ill. Sept. 7, 1995) (finding a wheelchair accessibility service hired by an airport was not an indirect air carrier under the Air Carrier Access Act).

32 *Cobb*, ARB No. 2012-0052, slip op. at 8.

33 *Evans*, ARB Nos. 2007-0118, -0121, slip op. at 9.

34 D. & O. at 7.

35 Petition at 13.

36 49 U.S.C. § 42121(e) (emphasis added); D. & O. at 8.

whereby BMC and/or EPAA provided safety-sensitive functions to HealthNet.[37] For reasons discussed in our D. & O., we reject that simply sharing a WVUHS affiliation inherits AIR21 coverage from HealthNet to Respondents.[38] We emphasize our reasoning is consistent with the general legal principle that "the mere existence of . . . common management and ownership are not sufficient to justify treating a parent corporation and its subsidiary as a single employer."[39]

Third, Complainant asserts that this case is cognizable pursuant to Section 11(c) of the OSH Act, 29. U.S.C. § 660(c).[40] This argument also lacks merit. Section 11(c)(2) of the OSH Act states:

> Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within 30 days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. If any such action the United States district courts shall have jurisdiction, for cause shown to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.[41]

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37 D. & O. at 8.

38 *See* D. & O. at 7 n.27, 8 n.35; *Aityahia,* ARB No. 2018-0028, slip op. at 8 (ALJ decision at 5); *Union Telecom, LLC v. United States*, 144 Fed. Cl. 477, 488 (2019), *aff'd* No. 2020-1052, 2021 WL 3086212 (Fed. Cir. 2021); *Greene v. Long Island R.R. Co.,* 99 F. Supp. 2d 268, 272 (E.D.N.Y. 2000), *aff'd* 280 F.3d 224 (2d Cir. 2002).

39 *Aityahia*, ARB No. 2018-0028, slip op. at 8 (ALJ Ruling at 5) (citing *Lusk v. Foxmeyer Health Corp.,* 129 F.3d 773, 778 (5th Cir. 1997)).

40 Petition at 16-17.

41 29 U.S.C. § 660(c)(2).

The section does not afford a private remedy for actions covered by the OSH Act.[42] Further, Section 11(c) is not one of the provisions to which the ARB has been delegated review authority.[43] Thus, Complainant's Section 11(c) claim is not subject to OALJ or ARB jurisdiction, and any omission of that claim by the OALJ or the ARB was harmless.

Fourth, fifth, and sixth, Complainant argues the Board did not consider evidence that Respondents and WVUHS are joint employers;[44] the Board mischaracterized the relationship between Respondents and HealthNet;[45] and the Board did not consider issues of temporal proximity or the basis of Complainant's termination and thus performed an incomplete review.[46] Arguments four and five do not warrant reconsideration because they do not alter our dispositive coverage analysis outlined in our initial decision. Again, Complainant asserts that the regulatory definition of "employee" extends to "an individual whose employment could be affected by an air carrier." But as we explained above and in our D. & O., the named Respondents are EPAA and BMC. Neither WVUHS nor HealthNet are named. Joint employer status and the regulatory definition of employee which Complainant cites are ways that liability can attach to covered air carriers or contractors named as parties, but neither citation can enlarge AIR21's coverage to Respondents BMC and EPAA who are otherwise not covered under the Act.[47] As we have repeated before, BMC's affiliation with WVUHS and WVUHS's alleged ownership interest in HealthNet do not make BMC an air carrier. EPAA's professional services agreement with BMC places EPAA still further from the

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42 *Gomez v. Wilson*, 2013 WL 4099466, at *3 (D. Neb. Aug. 13, 2013); *Ellis v. Chase Commc'ns, Inc.*, 63 F.3d 473, 476-77 (6th Cir. 1995) ("OSHA does not create a private right of action."); *Jeter v. St. Regis Paper Co.*, 507 F.2d 973, 976-77 (5th Cir. 1975) ("The only provision in the statute which addresses itself to a private remedy clearly indicates that Congress did not intend OSHA to create a new action for damages in favor of employees.").

43 Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13186 (Mar. 6, 2020).

44 Petition at 18-22.

45 *Id.* at 22-25.

46 *Id.* at 25-26.

47 *Printz v. STS Aviation Grp.*, ARB No. 2022-0045, ALJ No. 2021-AIR-00013, slip op. at 18, 24-25 (ARB Dec. 15, 2023) (explaining that "joint employer status is another way that liability can attach" to a covered party, but that "[the] statute names the entities who are prohibited from engaging in retaliation: an air carrier or contractor or subcontractor," and not more than that scope).

alleged aviation activity. As for our characterization of Respondents' relationship with HealthNet, for reasons enumerated against Complainant's second argument, Complainant does not demonstrate BMC and HealthNet are more than loosely affiliated subsidiaries of WVUHS. Respondents' interactions with HealthNet do not rise to the level of essential services to air transportation necessary to change our indirect air carrier analysis.

We omit discussion of temporal proximity or adverse action because we find no coverage for named Respondents, and so, do not reach the merits of Complainant's AIR21 retaliation claim. That analysis arises only if his claim is brought against covered parties. Thus, none of Complainant's arguments, alone or in total, demonstrate grounds for reconsideration.

Accordingly, the Board **DENIES** Complainant's Motion for Reconsideration.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge