

U.S. Department of Labor

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



IN THE MATTER OF:

DANIEL AUGUSTE,

ARB CASE NO. 2025-0035

COMPLAINANT,

ALJ CASE NO. 2023-AIR-00022

ALJ PAMELA A. KULTGEN

v.

DATE: September 16, 2025

SAFE TECH USA,

RESPONDENT.

Appearances:

For the Complainant:

Daniel Auguste; *Pro Se*; Smyrna, Georgia

For the Respondent:

**Ruth Ann Daniels, Esq. and Hunter W. Mattocks, Esq.; *Gray Reed*;
Dallas, Texas**

**Before JOHNSON, Chief Administrative Appeals Judge, and KAPLAN and
BURRELL, Administrative Appeals Judges**

DECISION AND ORDER

This case arises from a complaint filed by Complainant Daniel Auguste against his employer, Safe Tech USA., alleging retaliation in violation of the whistleblower protections of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21) and its implementing regulations.¹ Complainant appeals Administrative Law Judge (ALJ) Pamela A. Kultgen's January 23, 2025 Order of Dismissal, which dismissed his complaint with prejudice due to his non-compliance with discovery orders. As we cannot find the dismissal was an abuse of discretion, we affirm.

¹ 49 U.S.C. § 42121; 29 C.F.R. Part 1979 (2024).

BACKGROUND

In a March 25, 2024 Notice of Hearing and Scheduling Order, the ALJ ordered Complainant to provide initial disclosures to Respondent within 14 days and to respond to written discovery requests (interrogatories, requests for production) within 30 days of service.² Complainant then failed to serve his complete initial disclosures on Respondent and to respond to written discovery requests. Respondent moved to compel discovery. On September 13, 2024, the ALJ ordered Complainant to send his initial disclosures, and to respond to Respondent's interrogatories and requests for production by September 27, 2024.³ The ALJ also sanctioned Complainant by deeming Respondent's requests for admissions admitted, which Complainant had the option of moving to withdraw or amend.⁴ The September order warned that Complainant's failure to comply could result in dismissal pursuant to 29 C.F.R. § 18.57(b)(1)(v).⁵

This first order and the sanction it imposed failed to prompt Complainant to complete his discovery responses.⁶ The ALJ then held a videoconference on November 20, 2024 to ensure Complainant "understood . . . where we are in this situation and to ensure, to give [him] one, truly one last opportunity to comply with discovery" ⁷ In layman's terms, the ALJ explained which discovery was outstanding and that Complainant was required to send the discovery to Respondent by 5:00 p.m. on December 4, 2024.⁸ Complainant agreed to send Respondent's attorney "all of the original documents" and did not indicate difficulty understanding the ALJ's instructions or providing any discovery materials in his

² Notice of Hearing and Scheduling Order at 4.

³ Order Granting Respondent's Motion to Compel Discovery Responses and Denying Sanctions at 5.

⁴ Order of Dismissal at 1.

⁵ Order Granting Respondent's Motion to Compel Discovery Responses and Denying Sanctions at 3.

⁶ Order of Dismissal at 2.

⁷ Nov. 20, 2024 Video Conference Transcript (Tr). at 8.

⁸ Tr. at 11-13, 15-19. Respondent's attorney explained that Complainant had yet to supply the disclosures and responses previously sent to Respondent's former counsel. Tr. at 12-13. The ALJ also explained the requirement he file a motion to withdraw the admissions by the December 4 deadline, or they would be deemed admitted. Tr. at 20-21.

possession by the deadline.⁹ The ALJ warned she would dismiss Complainant's case if he failed to comply.¹⁰

Later that day, the ALJ issued her second discovery order instructing Complainant to provide initial disclosures, and complete responses to the interrogatories and requests for production by the 5:00 p.m. December 4 deadline and reiterating the same deadline for a motion to withdraw the deemed admitted requests for admission.¹¹ The ALJ's order stressed that she had warned Complainant during the videoconference that she would dismiss his claim if he disobeyed this latest order.¹²

Yet again, Complainant failed to fully comply with the standing discovery order. He sent five emails to the ALJ's office on December 4. The emails contained brief, tangential, and confusing responses to four of the thirteen interrogatories, no responses to the requests for admission, and no direct responses to the requests for production.¹³ Further, Complainant sent Respondent only two out of five emails he sent to the ALJ's office (these emails included an audio recording and a list of primarily first names) despite the ALJ's instruction to send all discovery to Respondent. Also, Complainant sent two of the five emails after the 5:00 p.m. deadline.¹⁴ Respondent then filed a motion to dismiss, which the ALJ granted on January 23, 2025.¹⁵ The ALJ reissued the Order of Dismissal on February 4, 2025, after Complainant informed her office he had recently been in a car accident and appeared to not have received the January 23, 2025 order.

⁹ Tr. at 13-14. Complainant stated: "I will get you all of the original documents . . . Everything that I have sent [Respondent's former attorney] I will send to you in good faith. It helps me more to give you more information that I have, everything that I have, so cannot prolong this because [the hearing date] is right around the corner." *Id.* He stated he would send "all of the documents and the pictures and the audio and the video . . . I am going to send [Respondent's attorneys]. They will receive that in the next two weeks." Tr. at 17.

¹⁰ Tr. at 27.

¹¹ Order Denying Respondent's Motion and Scheduling Order.

¹² *Id.* at 2.

¹³ Order of Dismissal at 3-4; Respondent's First Set of Discovery at 6-7.

¹⁴ Order of Dismissal at 3-4.

¹⁵ Respondent's Motion to Dismiss at 4; Order of Dismissal at 5.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the ARB to hear appeals from ALJ decisions and issue agency decisions in cases arising under AIR21.¹⁶ The Board reviews an ALJ's determinations on procedural issues, evidentiary rulings, and sanctions under an abuse of discretion standard.¹⁷ An ALJ abuses their discretion if they: (1) base the decision on an error of law or use the wrong legal standard; (2) base their decision on a clearly erroneous factual finding; or (3) reach a conclusion that, though not necessarily the product of a legal error of a clearly erroneous finding, cannot be located within the range of permissible decisions.¹⁸

DISCUSSION

Pursuant to the OALJ Rules of Practice and Procedure and the inherent power of ALJs to manage the orderly and expeditious disposition of their cases, ALJs may sanction parties for non-compliance with discovery orders via dismissal or default judgment.¹⁹ While these case-ending sanctions are reviewed for an abuse of discretion,²⁰ they “deserve[] closer scrutiny within the abuse-of-discretion

¹⁶ Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13,186 (Mar. 6, 2020); 29 C.F.R. § 1979.110(a).

¹⁷ *Carter v. BNSF Ry. Co.*, ARB No. 2021-0035, ALJ No. 2013-FRS-00082, slip op. at 7 (ARB Sept. 26, 2022) (citations omitted); *Butler v. Anadarko Petroleum Corp.*, ARB No. 2012-0041, ALJ No. 2009-SOX-00001, slip op. at 2 (ARB June 15, 2012) (citations omitted).

¹⁸ *Xia v. Lina T. Ramey & Assoc., Inc.*, ARB No. 2023-0046, ALJ No. 2022-LCA-00013, slip op. at 7-8 (ARB Oct. 7, 2024) (citation omitted).

¹⁹ 29 C.F.R. § 18.57(b)(1)(v). The OALJ Rules also provide that ALJs may “take any appropriate action authorized by the [Federal Rules of Civil Procedure]” in exercising “all powers necessary to conduct fair and impartial proceedings.” 29 C.F.R. § 18.12(b)(10); see *Newport v. Fla. Power & Light Co.*, ARB No. 2006-0110, ALJ No. 2005-ERA-00024, slip op. at 4 (ARB Feb. 29, 2008); *Jenkins v. EPA*, ARB No. 2015-0046, ALJ No. 2011-CAA-00003, slip op. at 8 (ARB Mar. 1, 2018).

²⁰ *Jenkins*, ARB No. 2015-0046, slip op. at 7 (citations omitted).

framework.”²¹ As such, ALJs “must exercise this power cautiously . . . and should take care in fashioning sanctions for conduct that abuses the judicial process.”²²

Having closely scrutinized the record and weighed the factors outlined in *Keller v. Pittsburgh Baptist Church*, ARB No. 2025-0008, ALJ No. 2023-TAX-00012 (ARB July 30, 2025), we determine that the ALJ did not abuse her discretion in dismissing the complaint with prejudice.²³ The ALJ thrice warned Complainant his case could be dismissed if he failed to comply.²⁴ She attempted to achieve Complainant’s compliance by meting out the lesser sanction of deeming admitted Respondent’s requests for admission.²⁵ Nonetheless, Complainant continued to disobey each discovery order,²⁶ confounding Respondent’s efforts to obtain basic information to prepare its defense,²⁷ and, as the ALJ noted, did not comply “despite multiple opportunities, in a way that allows this matter to proceed.”²⁸

Complainant argues his admittedly partial compliance with discovery “stemmed from a recent [car] accident” and “lack of legal expertise” and was, for these reasons, non-willful.²⁹ While the ALJ did not make an express finding that Complainant’s non-compliance was the product of willfulness, bad faith, or fault,

²¹ *Adm’r, Wage & Hour Div., U.S. Dep’t of Lab. v. Global Horizons Manpower, Inc.*, ARB No. 2009-0016, ALJ No. 2008-TAE-00003, slip op. at 11 (ARB Dec. 21, 2010); *see also Jenkins*, ARB No. 2015-0046, slip op. at 10 (citation omitted) (“Nevertheless, where a lower court’s order of dismissal or default as a discovery sanction is under review, the review is more thorough because the drastic sanction deprives a party completely of its day in court.” (quotations and citations omitted)).

²² *Pfeifer v. AM Retail Grp., Inc.*, ARB No. 2023-0009, ALJ No. 2021-SOX-00030, slip op. at 3-4 (ARB Mar. 22, 2023) (citing *Newport*, ARB No. 2006-0110, slip op. at 4).

²³ *Keller v. Pittsburgh Baptist Church*, ARB No. 2025-0008, ALJ No. 2023-TAX-00012, slip op. at 8-10 (ARB July 30, 2025).

²⁴ *See id.* at 9 (“[W]hether the non-compliant party was warned their conduct or failure to comply could result in dismissal or default judgment”).

²⁵ *See id.* (“[T]he efficacy of less drastic sanctions”).

²⁶ *See id.* (“[W]hether the party failed to comply with an order”).

²⁷ *See id.* (“[P]rejudice to the opposing party”).

²⁸ *See id.* (“[I]nterference with the judicial process”).

²⁹ Complainant’s June 20, 2025 filing (Appellant’s Response to Respondent’s Arguments) at 4.

this error was harmless.³⁰ Complainant has not established that he was unable to comply with discovery due to a car accident as he only now contends. The timeline simply does not correspond with Complainant's excuse that a car accident kept him from complying. Complainant first sent the ALJ's law clerk an email stating he had been in a car accident on January 28, 2025.³¹ During the November 20, 2024 teleconference, he readily assented to meet his discovery obligations by the December 4, 2024 deadline.³² Moreover, Complainant presents no other information (nor does the record contain evidence) showing that he informed the ALJ that a car accident occurred prior to that deadline and impeded his ability to meet it.

Also, Complainant's contention he could not have been willful in his non-compliance because he was unrepresented does not equate with an inability to comply. While pro se litigants are to be afforded latitude, they are "equally bound to follow the rules of practice and procedure as complainants represented by counsel."³³ The ALJ here amply accommodated Complainant, who expressed no trouble abiding by her orders and was repeatedly warned of dismissal. In the absence of evidence credibly demonstrating Complainant's inability to comply, we conclude that Complainant's discovery violations were willful.³⁴

³⁰ "Of these factors, the first of culpability, willfulness, or bad faith must be met prior to a case's dismissal with prejudice or the issuance of a default judgment for a party's failure to comply with a discovery order, given the universality of that requirement." *Keller*, ARB No. 2025-0008, slip op. at 10 (citing *Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 640 (1976) (quoting *Societe Internationale pour Participations Industrielles et Commerciales v. Rogers*, 357 U.S. 197, 212 (1958)) ("Rule 37 'should not be construed to authorize dismissal of (a) complaint because of petitioner's noncompliance with a pretrial production order when it has been established that failure to comply has been due to inability, and not to willfulness, bad faith, or any fault of petitioner.")). The Eleventh Circuit (which has appellate jurisdiction in this case) limits dismissal as a sanction for non-compliance with discovery orders to instances where the failure is a result of willfulness or bad faith, and lesser sanctions would not suffice. *Lyle v. BASF Chemistry, Inc.*, 802 F. App'x 479, 482 (11th Cir. 2020) (citing *Malautea v. Suzuki Motor Co.*, 987 F.2d 1536, 1542 (11th Cir. 1993)).

³¹ Respondent's Response and Motion to Strike Complainant's Opening Brief as Untimely and Dismiss the Appeal, Ex. D. As a result, the ALJ reissued the Order of Dismissal on February 4, 2025 to preserve Complainant's appeal rights and postpone the appeal deadline. Notice of Reissuance.

³² See *supra* note 11.

³³ *Xanthapoulos v. Mercer Inv. Consulting*, ARB 2022-0032, ALJ No. 2021-SOX-00017, slip op. at 27 (ARB Sept. 28, 2023) (citing *Jeanty v. Lily Transp. Corp.*, ARB No. 2019-0005, ALJ No. 2018-STA-00013, slip op. at 12 (ARB May 13, 2020)).

³⁴ *Malautea*, 987 F.2d. at 1542-43 (finding defendants' violations of three discovery orders willful because they failed to provide a "credible explanation" for their non-compliance).

Lastly, Complainant's argument the ALJ ignored Respondent's initial disobedience of discovery orders is unavailing. The ALJ addressed the prior delays caused by Respondent's first attorney's failure to comply with discovery.³⁵ In her Order of Dismissal, the ALJ noted that once Respondent obtained new representation in January 2024, the March 25, 2024 Notice of Hearing and Scheduling Order reset the discovery schedule and that discovery "should have proceeded normally" but for Complainant's non-compliance.³⁶ As Complainant points to no evidence Respondent failed in its discovery obligations subsequent to its new attorneys' involvement in the case as of January 2024 and the issuance of the March 25, 2024 order, the ALJ did not err in concluding Complainant's failures were unmitigated by Respondent's conduct in discovery and justified dismissal.

Therefore, we find the ALJ did not abuse her discretion in dismissing Complainant's AIR21 complaint.

For the foregoing reasons, we **AFFIRM** the ALJ's dismissal of the complaint.

SO ORDERED.

ELLIOT M. KAPLAN
Administrative Appeals Judge

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge

³⁵ Order Granting Motion to Withdraw, Setting Firm Deadline For Respondent to Provide Initial Disclosures to Complainant, and Extending Deadline for Parties to Submit Status Report at 2-4.

³⁶ Order of Dismissal at 4.