

U.S. Department of Labor

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



IN THE MATTER OF:

JEFFREY EISENBERG,

ARB CASE NO. 2025-0090

COMPLAINANT,

ALJ CASE NO. 2025-AIR-00014

ALJ HEATHER C. LESLIE

v.

DATE: February 10, 2026

UNITED AIRLINES, INC.,

RESPONDENT.

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

ORDER OF DISMISSAL

This case arises under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21) and its implementing regulations.¹ A United States Department of Labor Administrative Law Judge (ALJ) issued an Order Granting Respondent's Motion for Summary Judgment on August 25, 2025. Under the applicable implementing regulations, parties desiring to seek review of an ALJ's order must file a written petition for review with the Administrative Review Board (ARB or Board) within ten business days of the date of the ALJ's decision.² Thus, to be timely, Complainant was required to file a petition for review with the Board on or before September 9, 2025. Complainant filed his Petition for Review with the Board via its Electronic Filing and Service (EFS) system on September 11, 2025.

On September 22, 2025, the Board issued a Notice of Appeal Acceptance, Electronic Filing Requirements, and Briefing Order (Briefing Order). Under the terms of the Briefing Order, Complainant was ordered to file his Opening Brief

¹ 49 U.S.C. § 42121; 29 C.F.R. Part 1979 (2025).

² 29 C.F.R. § 1979.110(a).

within twenty-eight (28) days of the date of issuance of the Board's Briefing Order, i.e., by October 20, 2025.

As of December 3, 2025, Complainant had not filed his Opening Brief. For this reason and in response to Respondent United Airlines' Motion to Dismiss for Complainant's Failure to Timely Appeal or File Opening Brief (Motion), the Board issued an Order to Show Cause on December 3, 2025. The Order to Show Cause ordered Complainant to explain on or before December 15, 2025, why the Board should not dismiss his appeal for failing to file a timely petition for review **and/or** for failing to file a timely opening brief. Complainant was also ordered to file his Opening Brief with his response. The Board informed Complainant that if it did not receive the Complainant's response to the Order and his Opening Brief within ten (10) calendar days of the issuance of the Order, the Board could dismiss the appeal without further notice to the parties.

On December 16, 2025, Complainant emailed the Board and indicated that his response to the Motion to Dismiss was attached.³ The two attachments to his email were titled with the headings 1) Response to United Airlines, Inc. Motion to Dismiss Incorporated Remarks on Docket Records Contamination Case backlog – Pending Administrative Review Board Motion to Compel OALJ Records per FOIA Request Submitted 9/29, and 2) Supplemental Filing Regarding Sua Sponte Conversion and Due Process Violations (a filing in U.S. District Court).⁴ The Complainant did not file an Opening Brief. On December 22, 2025, Respondent filed a Reply in Support of Motion to Dismiss for Complainant's Failure to Timely Appeal or File Opening Brief and on December 23, 2025, Complainant emailed a response to Respondent's Reply.⁵ For the first time in this response, Complainant included a screenshot of what appears to be an email from the Board's technical team, showing contact on September 9, 2025, his deadline for filing a petition for review, between Complainant and the Board about filing his appeal.

³ Complainant's email was sent at 12:15 a.m. Eastern Standard Time (EST). Also, on December 14, 2025, Complainant emailed the Department's FOIA Requests email address and also sent the email to the Board. The email referred to a FOIA request he had made and referenced the Board's Order to Show Cause, the response to which was due on December 15, 2025.

⁴ The Board accepted these two documents as filings in this matter.

⁵ The Board accepted Complainant's response to Respondent's Reply in this matter.

Between December 16, 2025, and January 26, 2026, Complainant sent over thirty emails to the Board. These near daily emails purported to contain updates on his case and some contained attachments that are styled as motions or themselves purport to be motions. These included: (1) “PRE HOLIDAY CASE TAINT HOUSEKEEPING AND CORRECTIVE MOTIONS” sent via email attachment on December 24, 2025; and (2) “Jan 9 2026 Update – DOL Records Spoliation. IMPORTANT DISCOVERY MOTION – TIME SENSITIVE” sent via email on January 9, 2026. The former document did not request any particular action by the Board. The latter requested the Board to compel the ALJ who heard the case below to “submit to video recorded deposition.” This request, sent via email, also requested the Board to “DOCKET THIS MOTION WITH CORRESPONDING FILING DATE JANUARY 9, 2025. [sic] (Today).” These documents and Complainant’s other emails were not accepted or docketed by the Board, as they did not comply with the Briefing Order.

On January 26, 2026, the Board issued an Order, ordering Complainant, within 10 calendar days of the issuance of the order, to: 1) respond to Respondent’s Motion to Dismiss on this matter, including with argument and proof that his Petition for Review was timely filed or why his Petition should be accepted even though it was untimely filed, 2) identify all of the documents he filed between September 11 and September 20, 2025, that he considered to be part of his Petition for Review in this matter, 3) file an Opening Brief addressing the ALJ’s decision to dismiss his complaint because it was untimely filed and that no grounds existed for equitable modification, 4) file all of his responses as ordered using the EFS system or by U.S. Mail (or personal or commercial delivery), and 5) refrain from submitting any further filings using the Board’s email address.

In the Order, the Board again noted that it has the authority to issue sanctions, including dismissal, for a party’s failure to comply with the Board’s orders and briefing requirements.⁶ Indeed, the Board has the inherent power to dismiss a case for failure to prosecute in an effort to control its docket and to promote the efficient disposition of its cases.⁷ The Board’s authority to dismiss an appeal for failure to comply with Board orders is well established and critical for the

⁶ *Knibb v. N.J. Transit Rail Ops., Inc.*, ARB No. 2023-0011, ALJ No. 2020-FRS-00078, slip op. at 4 (ARB Feb. 3, 2023) (citation omitted).

⁷ *Id.* (citation omitted).

Board to fulfill its obligations on behalf of the Secretary of Labor.⁸ The Board particularly highlighted that **“If the Board d[id] not receive the Complainant’s responses to this Order and Opening Brief within ten (10) calendar days of the issuance of this Order in the manner described above, the Board may dismiss the appeal without further notice to the parties.”**

Complainant’s response to the Board’s Order was due on February 4, 2026. To date, Complainant has not filed a response to the Board’s Order using the EFS system. Additionally, the Board has not received any response from Complainant as filed by U.S. Mail or personal or commercial delivery. The Board’s Rules of Practice and Procedure specify that “a document filed using a method other than the Department’s electronic case management system is considered filed when received by the Clerk of the Appellate Boards.” 29 C.F.R. § 26.3(b). As no such filing has been received, Complainant has failed to file a response to the Board’s January 26, 2026 Order.⁹ Given Complainant’s failure to file a response to, and comply with, the Board’s orders, we hereby **DISMISS** Complainant’s appeal.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge

⁸ 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).

⁹ On January 27, 2026, at 2:52 a.m., EST, Complainant emailed the Board a document with the filename “Special Spotlight on Spoilation – Reply to ARB Correspondence of Jan 26 2026.” In response, on January 27, 2026, at 3:10 p.m., EST, the Board emailed Complainant reiterating that his emailed document would not be accepted and that he was required to file with the Board using the Board’s electronic system or by U.S. Mail or personal or commercial delivery. Approximately an hour later, at 4:07 p.m., EST, Complainant again emailed the Board indicating that he would upload a response before the deadline. The Board did not respond to this email.