U.S. Department of Labor Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

IN THE MATTER OF:

BAHIG SALIBA,

COMPLAINANT,

v.

AMERICAN AIRLINES, INC.,

RESPONDENT.

ARB CASE NO. 2025-0094

ALJ CASE NO. 2025-AIR-00046

DATE: December 30, 2025

Appearances:

For the Complainant:
Bahig Saliba; *Pro Se*; Scottsdale, Arizona

***For the Respondent*:**
Patrick D. Joyce, Esq.; *Seyfarth Shaw LLP*; Seattle, Washington

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

DECISION AND ORDER DENYING INTERLOCUTORY APPEAL

This case arises from a complaint filed by Complainant Bahig Saliba against his former employer, Respondent American Airlines, alleging retaliation in violation of the whistleblower protections of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21).[1] On September 23, 2025, Complainant filed a Petition for Review with the Administrative Review Board (Board) appealing the Chief Administrative Law Judge's (ALJ's) denial of his motion to remand his AIR21 claim to the Occupational Safety and Health Administration (OSHA) and to compel OSHA to vacate its decision, file and notify Respondent of allegations he

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

contends OSHA omitted from his complaint, and conduct a new investigation.[2] Complainant further asks the Board to remand to OSHA to complete the filing and notification process.[3]

BACKGROUND

Complainant is a former American Airlines pilot.[4] OSHA recorded Complainant's December 16, 2024 complaint with one complaint allegation: American terminated Complainant's employment in retaliation for his filing internal complaints and an FAA complaint that "pilots who took the Johnson & Johnson vaccination that was paused by the [FDA] from 2021-2022 held invalid medical certificates for accepting an experimental drug that was not approved or authorized by the [FAA]."[5] In its August 1, 2025 determination letter, OSHA stated it had completed its investigation and denied the claim on the basis that it found American met its affirmative defense.[6]

Complainant filed his objections to OSHA's determination with the Office of Administrative Law Judges (OALJ). Prior to the case's reassignment from the Chief ALJ to an ALJ who would issue a prehearing order and preside over the hearing as outlined in the Notice of Docketing,[7] Complainant moved for the ALJ to remand to OSHA to vacate its decision and "[c]ompel OSHA to perform [a] nondiscretionary duty and issue a new letter of investigation . . . to include all the allegations" and to conduct said investigation with new investigators.[8] Complainant asserted the OSHA investigator failed to accurately record and investigate the full breadth of

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2 Petition for Review (Pet. for Review) at 8; Motion for Remand at 8.

3 Complainant's Brief Showing Cause (Comp. Br.) at 13.

4 Pet. for Review at 1.

5 Complaint Allegation.

6 August 1, 2025 OSHA Determination Letter at 1.

7 Notice of Docketing at 1.

8 Motion for Remand at 8. The Chief ALJ issued the Notice of Docketing on September 5, 2025, informing the parties the case had not yet been assigned to a presiding ALJ and that a Notice of Hearing and Prehearing Order would be sent to the parties once that occurred. Notice of Docketing at 1. Three days later, Complainant filed his Motion for Remand. Order Denying Motion to Remand at 1.

allegations comprising what he originally reported to OSHA in his complaint.[9] He specifically sought the inclusion of his allegations that Respondent "interfere[d] in Complainant's FAA medical certification standard, a violation of 14 C.F.R. §§ 91.11 and 121.580" and engaged in "coercion [of Complainant] to operate aircraft under threat."[10]

The Chief ALJ denied Complainant's motion, finding the AIR21 implementing regulations did not generally allow ALJs to remand to OSHA to conduct further investigation.[11] Complainant then filed a motion for reconsideration which argued OSHA's alleged exclusion of some of his allegations violated the nondiscretionary filing and notification requirements described in 49 U.S.C. § 42121(b)(1).[12]

Complainant then filed a Petition for Review with the ARB.[13] Having not yet decided Complainant's motion for reconsideration, the Chief ALJ issued an order which stayed all deadlines and discovery pending Complainant's interlocutory

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[9] Motion for Remand at 2-5. The electronic record currently at OALJ does not indicate what precisely Complainant reported to the OSHA investigator prior to her drafting the "Complaint Allegation" she certified Complainant had filed with her on December 16, 2024. Complaint Allegation. The "Complaint Allegation" is the only OSHA documentation in that record preceding OSHA's August 1, 2025 determination denying the complaint. August 1, 2025 OSHA Determination Letter. The determination letter then parrots the single allegation stated in the "Complaint Allegation" drafted by the investigator as follows: "In brief, the complaint alleged you were terminated for raising concerns regarding pilots who took the Johnson & Johnson (J&J) vaccination that was paused by the Food and Drug Administration (FDA) from 2021-2022 held invalid medical certificates for accepting an experimental drug that was not approved or authorized by the Federal Aviation Administration (FAA)." August 1, 2025 OSHA Determination Letter at 1.

[10] Motion for Remand at 4.

[11] Order Denying Motion to Remand at 1.

[12] Motion for Reconsideration at 1-3. "Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint and the Administrator of the Federal Aviation Administration of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2)." 49 U.S.C. § 42121(b)(1).

[13] Pet. for Review.

appeal before the Board.[14] In his interlocutory appeal, Complainant seeks reversal of the ALJ's decision denying his motion, and asks that the Board remand his claim to OSHA for "proper [f]iling and [n]otification of all the allegations in the complaint . . . ."[15] Complainant did not request that the Chief ALJ certify the issue he raises for interlocutory appellate review.[16]

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the Board to hear appeals from ALJ decisions and issue agency decisions in cases arising under AIR21.[17] This authority includes the discretion to consider interlocutory appeals "in exceptional circumstances . . . ."[18]

DISCUSSION

1. The Board Declines to Deny the Petition for Review for Complainant's Non-Compliance with Service Requirements Amidst the Government Shutdown

The Board's September 30, 2025 Order to Show Cause in this matter ordered Complainant to file a brief within fourteen calendar days explaining why his interlocutory appeal satisfied the three elements of the collateral order exception explained in the Order.[19] Due to the federal government shutdown which took effect on October 1, 2025, the Board notified visitors to the Electronic Filing and Service

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[14] Sept. 26, 2025 Email Minute Order. Complainant also filed for a writ of mandamus in the United States District Court for the District of Arizona (2:25-cv-03240). Pet. for Review at 7. In District Court, Complainant seeks orders to vacate OSHA's decision, to compel OSHA to perform a nondiscretionary duty to issue a new letter of investigation with all of his complaint allegations, and to assign a new investigation to different investigators. Complaint in 2:25-cv-03240.

[15] Comp. Br. at 13 (emphasis original).

[16] 28 U.S.C. § 1292(b).

[17] 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).

[18] *Id*.

[19] Order to Show Cause at 3.

(EFS) system website that all deadlines in cases pending before the Board remained in effect and that while parties could submit filings through EFS during the shutdown, the Board could not process or accept the filings until the Department of Labor reopened. The notice instructed parties that EFS would not effectuate service of filings and that parties were to serve their filings by other lawful means outlined in the Board's Rules of Practice and Procedure at 29 C.F.R. § 26.4. Those means include mail,[20] commercial delivery,[21] and "[e]lectronic mail, if consented to in writing by the person served."[22]

Complainant filed his brief through EFS in response to the Order to Show Cause on October 6, 2025. Respondent first contends in its response brief that Complainant did not effectuate service of his brief upon Respondent by means alternative to EFS per the Board's notice to parties who filed via EFS during the shutdown. Respondent argues that "for this reason alone" the Board should deny Complainant's Petition for Review.[23]

We decline to deny Complainant's Petition solely for his failure to follow the Board's notification that EFS filers were to effectuate service by alternative lawful means detailed in 29 C.F.R. § 26.4 during the shutdown. Respondent does not argue Complainant's failure prejudiced it by interfering with its ability to submit its brief, or to frame and present its defense to the Board.[24] In fact, Respondent proceeded to argue in its response brief that Complainant's interlocutory appeal before the Board does not meet the collateral order exception.[25] As Respondent has not argued it suffered harm owing to Complainant's non-compliance with the Board's notice to EFS filers regarding service during the course of the shutdown (nor is any such harm evident), we will not deny the Petition for Review on the basis of insufficient or untimely service of Complainant's brief.

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[20] 29 C.F.R. § 26.4(b)(2).

[21] *Id.* § 26.4(b)(3).

[22] *Id.* § 26.4(a)(1).

[23] Respondent American Airlines, Inc.'s Response Regarding the Board's September 30, 2025, Order to Show Cause (Resp. Br.) at 1-2.

[24] *Id.* at 1-2.

[25] *Id.* at 2-3. Complainant appears to have belatedly served Respondent his brief in response to the Order to Show Cause via certified mail on October 31, 2025. Comp. Brief filed on October 31, 2025 at 14.

2. The Chief ALJ's Denial of Complainant's Motion to Remand to OSHA Does Not Satisfy the Collateral Order Exception

The Board may exercise its discretion to grant an interlocutory appeal of a decision which satisfies the collateral order exception to the traditional finality rule.[26] Such an order "finally determine[s] claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the *whole* case is adjudicated."[27] To meet the collateral order exception, the moving party must establish the following criteria: (1) the order conclusively determines the disputed question; (2) the order resolves an important issue which is completely separate from the merits of the action; and (3) the order would be effectively unreviewable on appeal from a final judgment.[28]

Complainant argues his appeal satisfies the collateral order exception because OSHA's alleged failure to fulfill a duty to notify Respondent of all of Complainant's allegations per 49 U.S.C. § 42121(b)(1) "is not part of the investigation and is separate from the merits of the action but has a great and very important impact on the outcome of the case."[29] Respondent counters Complainant's

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[26] *Gulden v. Exxon Mobil Corp.*, ARB No. 2023-0050, ALJ Nos. 2023-SOX-00021, -00022, slip op. at 5-6 (ARB Feb. 29, 2024). "[E]ven if the order meets the [collateral order exception] requirements, the Board's decision to accept the petition remains discretionary." *Id.* at 6 (citing Secretary's Order No. 01-2020, ¶ 5; *Priddle v. United Airlines*, ARB No. 2022-0006, ALJ No. 2020-AIR-00013, slip op. at 4 (ARB Mar. 21, 2022)).

[27] *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949).

[28] *Gulden,* ARB No. 2023-0050, slip op. at 5 (citing *Adm'r, Wage & Hour Div., U.S. Dep't of Lab. v. Goldstar Amusements*, Inc., ARB No. 2022-0027, ALJ Nos. 2021-TNE-00027, -00028, slip op. at 5 (ARB Sept. 30, 2022)). "This exception is 'strictly construe[d]' to avoid 'unnecessarily protracte[d] litigation.'" *Id.* at 5 (quoting *Goldstar Amusements*, *Inc.*, ARB No. 2022-0027, slip op. at 5).

[29] Comp. Br. at 12. While Complainant describes the procedures at 49 U.S.C. § 42121(b) as statutory duties unique to OSHA, AIR21 assigns them to the Secretary of Labor. 49 U.S.C. § 42121(b). The implementing regulations delegate the initial receipt of complaints to the OSHA Area Director and the function of notifying "the named person of the filing of the complaint, of the allegations contained in the complaint . . ." to "the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act." 29 C.F.R. §§ 1979.101, 1979.103(c), 1979.104(a).

interlocutory appeal does not meet the collateral order exception and the Petition for Review should be denied.[30]

A. The Chief ALJ's Order Does Not Conclusively Determine the Disputed Question

Complainant has not demonstrated that the Chief ALJ's order denying his motion for a remand to OSHA conclusively determines the disputed question.[31] The implementing regulations of AIR21 and other whistleblower protection provisions make clear that ". . . a complaint may not be remanded for the completion of an investigation *or for additional findings on the basis that a determination to dismiss was made in error*" and that "[r]ather, if there otherwise is jurisdiction, the administrative law judge shall hear the case on the merits."[32] As a result, the Chief ALJ correctly determined that where "a complainant alleges that OSHA either failed or refused to consider information in its investigation," the appropriate course of action is to proceed with a hearing on the merits.[33]

Indeed, the regular course of the hearing process allows for the failures or omissions which may have occurred during the receipt or investigation of the

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[30] Resp. Br. at 2-3.

[31] We are unable to assess the veracity of Complainant's claim that the investigator omitted a portion of his allegations. For the purpose of addressing the issues presented here, however, we assume this occurred and that the investigator failed to notify Respondent of a portion of Complainant's allegations per 49 U.S.C. § 42121(b)(1) and to investigate them per 49 U.S.C. § 42121(b)(2).

[32] 29 C.F.R. § 1979.109(a) (emphasis added). Regulations for the handling of whistleblower complaints under Section 806 of the Sarbanes-Oxley Act of 2002 (SOX), the Surface Transportation Assistance Act of 1982 (STAA), the six environmental statutes and Section 211 of the Energy Reorganization Act of 1974 (ERA), and Section 1558 of the Affordable Care Act (ACA), for example, also preclude remand to OSHA for the completion of an investigation or for additional findings reached on the basis of an alleged error and make clear that "[r]ather, if there otherwise is jurisdiction, the ALJ will hear the case on the merits or dispose of the matter without a hearing if the facts and circumstances warrant." 29 C.F.R. § 1980.109(c) (SOX); 29 C.F.R. § 1978.109(c) (STAA); 29 C.F.R. § 24.109(c) (ERA and the six environmental statutes); 29 C.F.R. § 1984.109(c) (ACA).

[33] Order Denying Motion to Remand at 1-2. The Chief ALJ's order here clearly states that "the presiding ALJ should instead afford the complainant the opportunity for a de novo hearing, after giving the parties proper notice and an adequate opportunity to conduct discovery." *Id*. at 2.

complaint at OSHA to be cured at the hearing stage via an amended complaint which supplements the OSHA-recorded allegations, as well as further investigation into the merits of the complaint through the discovery process, the submission of additional evidence, and de novo review.[34] Consequently, the Board also interprets adjudication as the ordinary mechanism by which respondents would be notified of fleshed out allegations and through which additional investigation of complaints can be achieved.[35] Accordingly, the Chief ALJ's order does not conclusively determine which allegations will constitute the complaint nor the Secretary's investigation of or examination of any evidence concerning the allegations at the hearing level.

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[34] 29 C.F.R. §§ 18.10-18.1104. For instance, "[t]he judge may allow parties to amend and supplement their filings." 29 C.F.R. § 18.36. And, "[a]t the [prehearing] conference, the judge may consider and take appropriate actions on the following matters: (1) Formulating and simplifying the issues . . . (2) Amending the papers that had framed the issues before the matter was referred for hearing; (3) Obtaining admissions and stipulations about facts and documents . . . (6) Controlling and scheduling discovery . . . (7) Identifying witnesses and documents . . . ." 29 CFR § 18.44(d). "All relevant evidence is admissible . . . ." 29 C.F.R. § 18.402.

[35] *Barboza v. BNSF Ry. Co.*, ALJ No. 2017-FRS-00111, slip op. at 8 (ALJ Aug. 29, 2018), *adopted and attached* ARB No. 2018-0076 (ARB Dec. 19, 2019) ("In all, the applicable pleading requirements are very informal. In cases being litigated before an ALJ, the parties often learn the full scope of the case through amended pleadings, mandatory disclosures, discovery, and other litigation processes. Hearings before the Department's ALJs are not subject to the formality of federal pleading requirements. Thus, as an integral part of the regulatory scheme, a complainant may add allegations at OALJ that he or she did not raise at OSHA. I therefore conclude that I have jurisdiction to consider all evidence that Complainant puts before me on the motion.") (citations omitted); *see also Sylvester v. Parexel Int'l, LLC*, ARB No. 2007-0123, ALJ Nos. 2007-SOX-00039, -00042, slip op. at 13 (ARB May 25, 2011) ("ALJs should freely grant parties the opportunity to amend their initial filings to provide more information about their complaint before the complaint is dismissed…"); *Kerchner v. Grocery Haulers, Inc.*, ARB No. 2008-0066, ALJ No. 2007-STA-00041, slip op. at 4-5 (ARB June 30, 2010) (finding the ALJ erred in remanding to OSHA to investigate a blacklisting claim after OSHA identified a third party and not respondent as the target of the claim despite STAA regulations then lacking a provision preventing remand and finding the supplementation of pleadings to be sufficient means for correction at OALJ); *Billings v. Tenn. Valley Auth.*, ALJ No. 1991-ERA-00012, slip op. at 5 (ARB June 26, 1996) ("Wage-Hour's findings were not binding on Billings since the regulations accorded him a right to a *de novo* hearing on the merits of his complaint, including providing testimony from his own witnesses and documentary evidence in support of his allegations. Accordingly, any arguable flaws in Wage-Hour's investigation or findings would not adversely affect litigation of his case before the ALJ.") (citations omitted). We thus see no reason Complainant should not be able to add the allegations he asserts he already raised vis-a-vis Respondent at OSHA to his complaint at OALJ.

B. The Chief ALJ's Order is Not Effectively Unreviewable on Appeal from a Final Judgment

Complainant has also not shown that the Chief ALJ's order denying his motion to remand to OSHA is effectively unreviewable on appeal from a final judgment. Should Complainant believe the hearing process (still in its preliminary stage) fails to account for all his allegations against Respondent once the presiding ALJ renders a final decision after a hearing on the merits, Complainant is free to appeal that decision together with the Chief ALJ's denial of his motion for remand to the Board.

Complainant's matter at OALJ thus "remains open, unfinished or inconclusive, [so] there may be no intrusion by appeal" to the Board.[36] As such, it is unnecessary for us to evaluate whether the Chief Judge's order denying the motion to remand to OSHA resolves an important issue completely separate from the merits of the action.[37]

For the foregoing reasons, we **DENY** Complainant's Petition for Review.

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[36] *Cohen,* 337 U.S. at 546.

[37] We recognize that OSHA has limited resources, a very high caseload, and some element of discretion. It would be troubling, however, if OSHA in fact failed to document all the reported allegations in the complaint, to notify Respondent of them, and to investigate them, as Complainant maintains. Although such failings may be cured at the hearing level, we would urge OSHA to take appropriate steps to ensure it is carrying out the procedures for the Secretary of Labor's receipt and investigation of complaints properly.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge

PHILIP G. KIKO
Administrative Appeals Judge