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

IN THE MATTER OF:

LITTIECE JONES,

COMPLAINANT,

v.

DELTA AIR LINES, INC.,

RESPONDENT.

ARB CASE NO. 2026-0005

ALJ CASE NO. 2025-AIR-00008
ALJ CHRISTOPHER LARSEN

DATE: September 18, 2026

Appearances:

For the Complainant:
Littiece Jones; *Pro Se*; Canton, Michigan

***For the Respondent*:**
Lincoln O. Bisbee, Esq.; Daniel Kees, Esq.; *Morgan, Lewis & Bockius LLP*; New York, New York; Megan L. Lipsky, Esq.; *Morgan, Lewis & Bockius LLP*; Washington, District of Columbia

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

DECISION AND ORDER

This case arises from a complaint filed by Complainant Littiece Jones against her employer, Delta Air Lines, Inc., alleging retaliation in violation of the whistleblower protections of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21)[1] and the Patient Protection and Affordable Care Act (ACA).[2] Complainant appeals Administrative Law Judge (ALJ) Christopher Larsen's September 26, 2025 Order Denying Motion to Extend and Granting Motion

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[1] 49 U.S.C. § 42121; 29 C.F.R. Part 1979 (2026).

[2] 29 U.S.C. § 218c; 29 C.F.R. Part 1984 (2026).

to Dismiss, which dismissed her complaint with prejudice because of Complainant's noncompliance with the ALJ's discovery orders. We find that the ALJ did not abuse his discretion in dismissing the complaint and affirm.

On February 8, 2024, Complainant filed an AIR21 and ACA complaint with the Occupational Safety and Health Administration (OSHA). Complainant, then a Customer Service Agent with Respondent, alleged that she internally raised concerns about the safety of Respondent's equipment and safety checks[3] as well as a minimum work-hour policy she claimed violated the ACA.[4] She alleged Respondent retaliated against her by informing her that she could lose her shift-trading (swapping) privileges because her work hours did not average twenty hours per week as required by company policy.[5] OSHA dismissed the complaint on October 7, 2024.[6] Complainant filed objections to OSHA's determination and requested a hearing before an ALJ on November 6, 2024.[7] Complainant has represented herself since filing her claim.[8]

A November 8, 2024 Notice of Docketing ordered the parties to exchange their initial disclosures within twenty-one days.[9] On December 10, 2024, ALJ Christopher Larsen issued a Notice of Video Hearing and Pre-Hearing Order setting the hearing for April 30, 2025, and informing the parties they were required to conduct discovery under 29 C.F.R. Part 18, Subpart A.[10] The order warned that failure to fully comply could result in sanctions under 29 C.F.R. §§ 18.57 and

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3 *Id*. at 1-5, 9-13.

4 *Id*. at 7-8, 12-13.

5 *Id*. at 1, 7, 11-12. On June 24, 2024, Respondent suspended Complainant's shift-swapping privileges. October 7, 2024 OSHA Determination Letter at 1.

6 October 7, 2024 OSHA Determination Letter at 1. OSHA determined that Respondent's twenty-hour weekly minimum paid-time policy applied company-wide and was enforced against multiple employees whose shift-swapping privileges were suspended for noncompliance. *Id*.

7 November 6, 2024 Complainant Letter to Chief Administrative Law Judge-Office of Administrative Law Judges.

8 Notice to Self-Represented Litigant at 1; Order Denying Motion to Extend and Granting Motion to Dismiss at 2.

9 Notice of Docketing at 2. Respondent served its initial disclosures on Complainant on November 29, 2024. Respondent's (Resp.) Discovery Plan (Jan. 16, 2025) at 1.

10 Notice of Video Hearing and Pre-Hearing Order at 1, 4.

18.72.[11] The ALJ also issued a Notice to Self-Represented Litigant on December 10, 2024, stating Complainant was required to follow the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges (OALJ).[12] The notice warned: "You must also timely respond to interrogatories, requests for admissions, or other discovery served upon you. Failure to do so may result in sanctions against you. See 29 C.F.R. 18.57."[13]

After Complainant failed to respond to Respondent's efforts to confer on a joint discovery plan,[14] Complainant moved for an extension of time to submit one.[15] In a January 24, 2025 order, the ALJ granted Complainant's motion for an extension and set February 7, 2025, as the deadline to meet, confer, and file a joint discovery plan, "without delaying discovery already in progress." [16] Respondent served interrogatories and requests for production on Complainant on February 6, 2025.[17]

During a February 14, 2025 conference call to discuss a proposed discovery schedule, the ALJ ordered Complainant to provide her past-due initial disclosures by February 28, 2025.[18] He noted Complainant's responses to Respondent's

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[11] *Id*. at 7.

[12] Notice to Self-Represented Litigant at 1.

[13] *Id*. at 2. ALJs may sanction parties for their non-compliance with discovery orders by "[d]ismissing the proceeding in whole or in part." 29 C.F.R. § 18.57(b)(1)(v).

[14] Resp. Discovery Plan (Jan. 16, 2025) at 1. Complainant had yet to serve her past-due initial disclosures. *Id*. at 2.

[15] Complainant's Motion for Extension of Time to Submit Joint Discovery Plan, Request for Court Assistance, and Clarification of Jurisdiction. Complainant sought an extension because of an alleged on-the-job injury, a "[r]etaliatory" email from Respondent, a status conference in a "related EEOC federal court case," and additional complaints she had filed against Respondent. *Id*. at 1-2.

[16] Order on Complainant's Motion for Extension and Other Matters at 1.

[17] Order Denying Motion to Extend and Order for Determination of Accommodation Claim at 3. Respondent emailed Complainant on January 27, 2025 to confer on a new joint discovery plan and attached a proposed plan. Resp. Discovery Plan (Feb. 7, 2025) at 1. Complainant did not comment on the proposed plan until the afternoon of February 7, 2025 (the deadline). *Id*. at 2. Unable to reach an agreement with Complainant on the discovery plan, Respondent submitted its own proposed discovery plan to the ALJ. *Id*.

[18] February 14, 2025 Conference Call Transcript at 15. The ALJ explained what the disclosures were required to include pursuant to the December 10, 2024 Notice of Video Hearing and Pre-Hearing Order. *Id*. at 11-12.

interrogatories and requests for production were outstanding.[19] The ALJ urged Complainant "to start meeting these deadlines"[20] and warned Complainant that her case could be dismissed if she "miss[ed] too many of them."[21] In a February 14, 2025 order, the ALJ rescheduled the hearing from April 30, 2025 to August 26, 2025.[22]

On February 28, 2025, the very day her initial disclosures were due, Complainant requested an extension because she had undergone a medical procedure under sedation the day prior and had a family emergency earlier that week.[23] Respondent opposed Complainant's request and attached exhibits showing that, on the evening and morning following her medical procedure, Complainant had managed to send detailed emails to Respondent and its third-party leave provider concerning her various claims.[24] The ALJ nonetheless granted Complainant's request and extended the deadline for Complainant to provide her initial disclosures to March 21, 2025.[25]

As Complainant had still failed to respond to the interrogatories and requests for production that Respondent first served upon her on February 6, 2025, and which were due on March 10, 2025, Respondent filed its first motion to compel.[26] Respondent also noted Complainant had ignored Respondent's March 12, 2025

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19 *Id*. at 14-15.

20 *Id*. at 14.

21 *Id*. at 15.

22 Order Continuing Hearing at 1.

23 Order Extending Time at 1.

24 Resp. March 4, 2025 Letter to ALJ Christopher Larsen at 1-2; *id*., Exs. A, B.

25 Order Extending Time at 1. Complainant also filed a motion for injunctive relief on February 19, 2025. Motion for Injunctive Relief and Request for Hearing. Respondent opposed the motion. Respondent Delta Air Lines, Inc.'s Opposition to Complainant's "Motion for Injunctive Relief and Hearing." The ALJ denied Complainant's motion, and explained he lacked the authority under the ACA or AIR21 to grant injunctive relief. Order Denying Injunctive Relief at 1-2.

26 Respondent Delta Air Lines, Inc.'s Motion to Compel Production of Documents and Responses to Interrogatories (March 17, 2025) at 5; *see* 29 C.F.R. § 18.60(b)(2) ("The responding party must serve its answers and any objections within 30 days after being served with the interrogatories . . . ."); *see also* 29 C.F.R. § 18.61(b)(2)(i) ("The party to whom the request [for production] is directed must respond in writing within 30 days after being served . . . .").

letter requesting her responses and had failed to provide her availability for deposition.[27]

In reply on March 19, 2025, Complainant moved for an extension of the deadlines for her to respond to Respondent's motion to compel and to file her initial disclosures.[28] Complainant provided no date by which she expected to be able to supply the initial disclosures or her response to the motion to compel, but cited "medical reasons, workplace violence, and Respondent's deliberate interference with Complainant's ability to work, receive income, engage with witnesses, and maintain health insurance benefits" as the bases for her requests.[29] Respondent opposed Complainant's extension requests.[30]

In a March 26, 2025 order, the ALJ denied Complainant a further extension to complete her initial disclosures because the disclosures had been due three months earlier and Complainant had already received two extensions.[31] The ALJ directed Complainant to complete the initial disclosures immediately and also denied her request to extend the March 31, 2025 deadline for Complainant to reply to Respondent's Motion to Compel, finding that although her medical issues may

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27 *Id*. at 5-6.

28 Complainant's Motion to Extend the March 21, 2025, Deadline, Extend Time to Respond to Respondent's Motion to Compel, and Opposition to Respondent's Request to Adjourn the August 26, 2025, Hearing at 1-2, 4.

29 *Id*. at 1, 3. Complainant did not explain the "workplace violence" and "deliberate interference" she alleged. *Id*. at 1-4. Complainant attached letters from a physician stating Complainant had undergone a procedure under sedation on February 27, 2025, and that the provider planned "a repeat surgery in April or May 2025 with anticipated recovery time of 2 days." February 27, 2025 and March 18, 2025 Letters, Courtney Stacey Lim, M.D. Another provider letter stated that Complainant "was seen in our clinic on 3/17/25" and "can return to work 3/18/25 with no restrictions." March 18, 2025 Letter, Jennifer Beth Norman, PA-C. The letters did not elaborate on the limits to Complainant's ability to meet the March 21, 2025 deadline. *Id*.; February 27, 2025 and March 18, 2025 Letters, Courtney Stacy Lim, M.D.

30 Respondent Delta Air Lines, Inc.'s Opposition to Complainant's "Motion to Extend and Oppose."

31 Order Continuing Hearing and Denying Extensions of Time at 2.

have occupied her "for a few days at a time," the record did not show they prevented a timely response.[32]

On March 31, 2025, Complainant requested reasonable accommodation and modification of the discovery deadlines "under the ADA, the Rehabilitation Act, and principles of due process"[33] owing to her pro se status and symptoms of "Generalized Anxiety Disorder . . . and Post-Traumatic Stress Disorder" and "physical disabilities."[34] Complainant sought modification of the discovery deadlines "to allow time to accommodate [her] mental and physical disabilities and secure further support or legal assistance while undergoing mental treatment that will begin in April 2025."[35]

On April 3, 2025, the ALJ denied Complainant's extension requests, noting that none of the documentation Complainant attached in support of her request for reasonable accommodation discussed a functional impact on Complainant's ability to meet deadlines.[36] The ALJ found that it was up to Complainant "to demonstrate how I could reasonably accommodate her, and she suggests nothing other than unlimited open-ended extensions of time whenever she asks for them."[37] The ALJ ordered Complainant to make her initial disclosures "forthwith" and to respond to the interrogatories and requests for production served upon Complainant on February 6, 2025 "[n]o later than May 23, 2025."[38] The ALJ specifically warned that "[i]f [Complainant] does not timely comply with this Order, she may be subject to sanctions under 29 C.F.R. § 18.57(b), up to and including dismissal of her claim."[39]

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[32] *Id*. The ALJ also granted Respondent's earlier motion to modify the hearing date due to the unavailability of its counsel, and continued the hearing to January 21, 2026. *Id*. at 1-2.

[33] Complainant's Response in Opposition to Respondent's Motion to Compel and Request for Accommodation and Modified Scheduling Order at 5.

[34] *Id*. at 2-3.

[35] *Id*. at 3.

[36] ALJ Order Granting Motion to Compel in Part and Denying Motion to Compel in Part at 3.

[37] *Id*. at 4.

[38] *Id*. at 4-5.

[39] *Id*. at 5.

On May 23, 2025, the deadline for Complainant to respond to Respondent's interrogatories and discovery requests, Complainant sought a temporary stay of the discovery deadlines in the ALJ's April 3, 2025 Order and an extension totaling 28 business days for her submission and Respondent's review of her medical documentation.[40] Complainant sought the stay and extension as a "procedural accommodation under Section 504 of the Rehabilitation Act of 1973."[41]

In a June 10, 2025 order, the ALJ denied Complainant's request for modification of the discovery deadlines.[42] He questioned why Complainant could timely file motions but not respond to discovery, noting that her latest motion still failed to provide a definite date for answering interrogatories and document requests served on her in February.[43] The ALJ ordered Complainant to file and serve any evidence that her Generalized Anxiety Disorder, Post-Traumatic Stress Disorder, or other medical condition prevented her timely discovery responses or limited her ability to prosecute her claim, along with proposed reasonable accommodations for each limitation by June 27, 2025.[44]

On June 23, 2025, Complainant again requested an extension of the June 27, 2025 deadline for her to submit documentation of her diagnoses, functional limitations, and proposed accommodations, this time to July 18, 2025.[45] The ALJ denied Complainant's extension request for lack of good cause on June 24, 2025, noting that since December 2024, Complainant had filed an opposition to one motion and seven of her own motions.[46] Despite being informed of the importance of

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40 Motion for Temporary Stay and Extension of Time to Respond to Discovery Based on Pending Disability and Disability Documentation and Good Faith Negotiations at 5.

41 *Id*. at 2. Complainant stated that on May 1, 2025, she had begun "formal mental health treatment" that addressed her "ability to participate in discovery in a timely and complete manner" and that she had requested "[d]ocumentation verifying the nature and impact of these impairments." *Id*. at 3.

42 Order Denying Motion to Extend and Order for Determination of Accommodation Claim at 3.

43 *Id*.

44 *Id*. at 4.

45 Complainant's Motion to Extend June 27, 2025 Deadline Due to Medical Procedure and Delayed Medical Evidence Availability at 3. Complainant alleged a medical procedure she was to undergo on June 26, 2025, and two federal holidays delayed her efforts to obtain the documentation from her medical providers. *Id.* at 2.

46 Order Denying Motion to Extend at 2-3.

meeting deadlines, the ALJ found, Complainant seemed to have "adequate time and energy" only to seek extensions—doing so three times in three months—but none for responding to the interrogatories and requests for production she had received four months prior.[47]

On June 26, 2025, Complainant requested reconsideration of the ALJ's June 24, 2025 order.[48] Complainant sought an extension of the deadline for her to supply the medical documentation compliant with the June 10, 2025 order through August 22, 2025 or another date or a protective order allowing her to submit staggered or staged discovery responses.[49] The following day, Complainant submitted a letter dated June 26, 2025 from Melissa Coleman, LLMSW[50] describing Complainant's mental health symptoms.[51]

Respondent submitted a letter opposing Complainant's request on June 30, 2025,[52] and attached exhibits showing that (since receiving Respondent's interrogatories and discovery requests on February 6, 2025) Complainant had submitted: a complaint with the Michigan Occupational Safety and Health Administration (MIOSHA);[53] an appeal of MIOSHA's dismissal of that complaint on

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47 *Id*. at 2.

48 Motion for Reconsideration of June 24 Order or, in the Alternative, Motion for Protective Order, Reasonable Accommodation Determination, and Request for Appointed Counsel.

49 *Id*. at 3-4. Complainant stated she had been diagnosed with "PTSD and GAD due to ongoing workplace trauma from Delta Air Lines, Inc." and had begun "trauma-focused treatment on May 1, 2025 with the provider who has to have time to establish care and assess my disabilities and functional limitations." *Id*. at 8.

50 "LLMSW" refers to a Limited Master Social Worker License issued by the Michigan Department of Licensing and Regulatory Affairs (LARA). *See* Michigan Department of Education, School Social Worker Credentials: https://www.michigan.gov/mde/services/ed-serv/ed-cert/cert-guidance/school-social-worker.

51 Provisional Compliance Submission and Supplement to Motion for Reconsideration at 5; June 26, 2025 Letter from Melissa Coleman, LLMSW. Ms. Coleman's letter stated that due to Complainant's "anxiety, intrusive thoughts and memories, nightmares, difficulty with sleeping and concentration, loss or change in appetite, hypervigilance, etc.," "[s]pecial considerations and accommodations may be needed at this time to support [Complainant] with such things as recalling traumatic events[ ], completing daily tasks while avoiding triggers, and other obligations." *Id*.

52 Resp. June 30, 2025 Letter to ALJ Christopher Larsen.

53 *Id*., Ex. B.

June 20, 2025;[54] an opposition and sur-reply to Respondent's motion to compel discovery in an action pending in the Eastern District of Michigan in April 2025;[55] and a formal objection to the denial of her Unpaid Medical Leave of Absence Claim on June 15, 2025 with Respondent and its third-party leave provider.[56] On the basis that Complainant had yet to produce evidence supporting her request for accommodation, the ALJ denied Complainant's motions for reconsideration and a protective order on June 30, 2025.[57] Until Complainant did produce such evidence, the ALJ ordered, Complainant was required to "make discovery and cannot further delay this proceeding."[58]

Because Complainant had not responded to any of the discovery requests Respondent served upon her in February 2025,[59] Respondent filed a motion requesting dismissal of the complaint on September 3, 2025.[60] Respondent's motion detailed the numerous motions, submissions, appeals, and complaints—at least 20 in total—that Complainant had filed since February 2025, both in this proceeding and in other matters she initiated against Respondent in other forums.[61] Twelve of those filings were submitted after the ALJ's most recent June 30, 2025 order directing Complainant to respond to discovery.[62]

On September 17, 2025, Complainant filed a motion opposing Respondent's motion for dismissal for her non-compliance with discovery.[63] She alleged

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54 *Id*., Ex. C.

55 *Id*., Exs. D, E.

56 *Id*., Ex. F at 1-2, 5.

57 Order Denying Reconsideration and Other Relief at 1. The ALJ also denied Complainant's request for appointment of counsel as "[a] Complainant bringing an administrative claim has no right to appointed counsel to prosecute that claim." *Id.*

58 *Id*. at 1-2.

59 Respondent Delta Air Lines, Inc.'s Second Motion for Relief from Complainant Littiece Jones's Continued Failure to Comply with Discovery Obligations (Resp. Second Mot. for Relief) at 1. In its motion, Respondent stated that Complainant had served "facially deficient initial disclosures." *Id*. at 3.

60 *Id.* at 10.

61 *Id*. at 5-7.

62 *Id*. at 6-7.

63 Complainant's Motion for Extension of Time and Partial Response in Opposition to Respondent's Motion to Compel.

"[p]roviders have certified the need for extended time accommodations of 90 days or longer"[64] to serve her full discovery responses and requested such time to submit them.[65] Complainant also requested that the ALJ "[p]ermit rolling production of discovery as treatment permits," "[a]llow Complainant to supplement discovery with additional records, correspondence, and medical evidence as they become available" as well as order reasonable accommodations.[66] Complainant attached a letter from Keturah Prosen Schacht, MD dated August 22, 2025, which outlined "reasonable accommodations" for the performance of the essential functions of Complainant's job.[67]

Complainant also filed an undated letter from Kayla Jablonski, LLMSW.[68] Ms. Jablonski stated that Complainant completed a psychiatric evaluation on 8/11/25, began ongoing treatment on 8/27/25, was diagnosed with Trauma and Stressor Related Disorder, and "endorse[d] symptoms including difficulty concentrating . . . panic such as chest tightening and heart racing, elevated anxiety, and avoidance." Ms. Jablonski further noted that these symptoms "impact[ed] [Complainant's] ability to complete tasks related to recalling her workplace experiences, such as writing out the work related events she experienced, organizing work-incident related documents, and sorting through workplace-related email, texts, photos, and recordings."[69]

On September 26, 2025, the ALJ dismissed Complainant's claim under 29 C.F.R. § 18.57(b)(l)(v).[70] He noted the substantial delay since Respondent's

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64 *Id*. at 4.

65 *Id*. at 6.

66 *Id*.

67 *Id*. at 7; August 22, 2025 Letter from Keturah Prosen Schacht, MD. Dr. Schacht outlined accommodations for Complainant's "generalized anxiety disorder (GAD), post-traumatic stress disorder (PTSD), irritable bowel syndrome (IBS) and long Covid syndrome" that would enable her to "perform the essential functions of her job." *Id*. at 1. Dr. Schacht's recommendations for on-the-job accommodations included "[e]xtended time to review and respond to requests for written documents/statements, training materials, policies, or job-related documents" and a "[s]upport person present in accommodation or disciplinary meetings." *Id*. at 1-2.

68 Notice of Filing Exhibit A (Psychiatric Letter Regarding Functional Limitations and Treatment) at 2; Letter from Kayla Jablonski, LLMSW.

69 Letter from Kayla Jablonski, LLMSW at 1.

70 Order Denying Motion to Extend and Granting Motion to Dismiss at 4.

service of its discovery requests on Complainant[71] and that Complainant had "demonstrated considerable enterprise in arguing against a sanction" for her discovery non-compliance and had nevertheless submitted multiple filings in various proceedings despite seeking a reasonable accommodation to excuse her failure to respond to discovery.[72] He concluded that Complainant had "yet to suggest any reasonable accommodation I might offer that would allow her to go forward with this claim."[73] He found that the letters from Complainant's treatment providers "do not directly address the question to which I have been seeking an answer since May 23, 2025: *how much additional time does Ms. Jones need to respond to the discovery served on her on February 6, 2025?* Neither she, nor Ms. Coleman, nor Ms. Jablonski, nor Dr. Schacht answers that question."[74]

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the ARB to hear appeals from ALJ decisions and to issue agency decisions in cases arising under AIR21 and the ACA.[75] The Board reviews ALJ determinations on procedural issues, evidentiary rulings, and sanctions under an abuse of discretion standard.[76] An ALJ abuses his discretion if he: (1) bases the decision on an error of law or uses the wrong legal standard; (2) bases his decision on a clearly erroneous factual finding; or (3) reaches a conclusion that, though not necessarily the product of a legal error or of a clearly erroneous finding, cannot be located within the range of permissible decisions.[77]

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71 *Id*.

72 *Id*.

73 *Id*.

74 *Id*.

75 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).

76 *Butler v. Anadarko Petroleum Corp.*, ARB No. 2012-0041, ALJ No. 2009-SOX-00001, slip op. at 2 (ARB June 15, 2012) (the Board reviews an ALJ's imposition of discovery sanctions for abuse of discretion) (citations omitted).

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

DISCUSSION

Complainant argues that the ALJ's dismissal was an abuse of discretion because he did not consider lesser sanctions.[78] She also argues dismissal is a sanction "strongly disfavored absent willful misconduct, bad faith, or demonstrated prejudice."[79] Applying the framework set forth by the Board in *Keller v. Pittsburgh Baptist Church*, Respondent counters that the ALJ properly exercised his discretion to dismiss the complaint.[80]

Complainant further contends that the ALJ erred in failing to accommodate her disabilities when he denied her request to extend the deadline for her discovery responses.[81] She argues that the ALJ erred by not meaningfully engaging with the medical evidence she submitted in support of her request and by requiring her to provide a date by which she could comply with discovery.[82] Respondent replies that the ALJ appropriately considered Complainant's assertion of disability and medical evidence.[83]

Under the OALJ Rules of Practice and Procedure, an ALJ may, on motion, order sanctions including dismissal or default judgment for a party's failure to answer interrogatories or otherwise respond to discovery.[84] Further, ALJs possess inherent authority, apart from any rule or statute, to control and dispose of proceedings in an orderly and expeditious manner.[85] This authority includes the

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78 Complainant's Opening Brief (Comp. Opening Br.) at 3.

79 *Id*.

80 Respondent's Response Brief (Resp. Response Br.) at 18-27 (citing *Keller v. Pittsburgh Baptist Church*, ARB No. 2025-0008, ALJ No. 2023-TAX-00012, slip op. at 8-9 (ARB July 30, 2025)).

81 Comp. Opening Br. at 2-4.

82 *Id*. at 3-4.

83 Resp. Response Br. at 30.

84 *Id*. § 18.57(d)(1)(i).

85 *Keller*, ARB 2025-0008, slip op. at 7 (citations omitted).

power to sanction conduct that abuses the judicial process, including through dismissal or the entry of default judgment.[86]

It is normally appropriate for an ALJ to consider and balance the factors described in *Keller v. Pittsburgh Baptist Church* prior to issuing a case-ending sanction.[87] The factor 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 . . . ."[88] Willfulness may be established by a party's intentional non-compliance with an ALJ's orders.[89] Dismissal is not appropriate where the failure to comply "has been due to inability, and not to willfulness, bad faith, or any fault."[90] The burden to establish such inability lies with the non-compliant party.[91]

Having considered the entire record in this case, we find that Complainant failed to establish her inability to comply with the ALJ's discovery orders. Although

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[86] *Id.* (citation omitted); *see also Newport v. Fla. Power & Light Co.,* ARB No. 2006-0110, ALJ No. 2005-ERA-00024, slip op. at 4 (ARB Feb. 29, 2008) ("[S]ince dismissal is perhaps the severest sanction and because it sounds the death knell of the lawsuit, [the ALJ] must reserve such strong medicine for instances where . . . misconduct is correspondingly egregious.") (citation and internal quotation marks omitted).

[87] *Keller*, ARB No. 2025-0008, slip op. at 8-9; *see Robles v. Lazer Spot, Inc.,* ARB No. 2026-0009, ALJ No. 2025-STA-00038, slip op. at 9 (ARB July 23, 2026) ("The Board has recognized that these principles are non-exclusive and they do not constitute a straitjacket of requirements because ALJs need reasonable discretion to manage their dockets.") (citation and internal quotation marks omitted).

[88] *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)) (remaining citations omitted).

[89] *See Bass v. Jostens, Inc.*, 71 F.3d 237, 241 (6th Cir. 1995) ("A willful violation occurs whenever there is a conscious and intentional failure to comply with the court order.") (citation omitted); *see also Carpenter v. City of Flint*, 723 F.3d 700, 704 (6th Cir. 2013) ("The first factor—whether the party's failure is due to willfulness, bad faith, or fault—requires a clear record of delay or contumacious conduct.") (internal quotation marks and citation omitted).

[90] *Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers,* 357 U.S. 197, 212 (1958); *see also Keller*, ARB No. 2025-0008, slip op. at 10 & n.47 (explaining that a litigation-ending discovery sanction is inappropriate where noncompliance results from inability rather than willfulness, bad faith, or fault).

[91] *See United States v. Reyes*, 307 F.3d 451, 458 (6th Cir. 2002) (stating that the noncomplying party bears the "burden of showing that his failure to comply was due to inability, not willfulness or bad faith.") (citing *Reg'l Refuse Sys., Inc. v. Inland Reclamation Co.*, 842 F.2d 150, 154 (6th Cir. 1988)) (superseded by statute on other grounds).

the documentation Complainant submitted from her providers indicated symptoms that may have limited her capacity to engage in discovery to some extent, it did not identify functional limitations that precluded her from providing *any* discovery from the service of Respondent's discovery requests on February 6, 2025, through the already-extended May 23, 2025 deadline to respond to them, and until dismissal on September 26, 2025.[92] While evidence of a physical or mental impairment may, in some circumstances, show that a party is unable to comply with discovery orders, such evidence does not establish inability absent a demonstrated causal connection between the impairment and the discovery failures[93]—particularly where, as here, the dismissed party otherwise participated extensively in proceedings.[94]

Complainant's contemporaneous litigation activity undermines any claim that her impairments rendered her categorically unable to respond to discovery. While the record may reflect some limitations, it also demonstrates that Complainant retained the ability to prepare and submit litigation filings when she chose to do so. It is undisputed that after Respondent served its interrogatories and requests for production on February 6, 2025, and during the ensuing period of discovery noncompliance, Complainant nevertheless submitted the following filings against Respondent:

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92 August 22, 2025 Letter from Keturah Prosen Schacht, MD; June 26, 2025 Letter from Melissa Coleman, LLMSW; Letter from Kayla Jablonski, LLMSW.

93 *See, e.g., Lindsey v. St. Paul Fire & Home Ins. Co.,* 202 F. App'x 137, 140 (7th Cir. 2006) (affirming dismissal where the party's substantial participation in the litigation undermined a physician's note asserting she was unfit to be deposed and the physician had not demonstrated sufficient familiarity with the demands of a deposition to assess her fitness); *Heendeniya v. St. Joseph's Hosp. Health Ctr.,* 830 F. App'x 354, 359 (2d Cir. 2020) (summary order) (affirming dismissal where the record showed mental impairments affected the plaintiff's ability to focus, but did not establish the extent to which those conditions impaired his ability to meet deadlines or his functioning during the period of noncompliance).

94 *See Allen v. Stark State Coll.*, No. 5:17CV2706, 2019 WL 3387772, at *8-9 & n.5 (N.D. Ohio July 26, 2019) (finding willful and bad-faith noncompliance despite asserted Complex PTSD and therapist letters where numerous filings demonstrated an ability to participate in proceedings "when it suits her [to do] so"), *aff'd*, Nos. 19-3723/3975, 2020 WL 4382781 (6th Cir. June 4, 2020); *Cage v. Beard*, No. 2:23-cv-11575, 2026 WL 260223, at *2 (E.D. Mich. Jan. 5, 2026) (finding the factor of willfulness, bad faith or fault weighed in favor of dismissal where plaintiff asserted mental health issues but filed cogent motions and had recently actively prosecuted his case, showing inactivity was "partially of his own volition and not due to reasons beyond his control"), report and recommendation adopted, 2026 WL 306459 (E.D. Mich. Feb. 3, 2026).

- At least six motions or timely oppositions to motions in the instant proceedings;[95]
- Seven filings in related Michigan occupational-safety proceedings from April 2025 to August 2025, including five motion-related filings or oppositions;[96]
- Five filings in a related proceeding in the Eastern District of Michigan from May 2025 to August 2025, including three motions and a notice of intent to seek a temporary restraining order and preliminary injunctive relief.[97]

Accordingly, the discovery failures were at least partly within Complainant's control and cannot fairly be attributed to an inability to comply.

Moreover, it is difficult to conclude that Complainant was genuinely unable to comply with discovery and was not engaging in dilatory tactics when she consistently filed motions requesting extensions nearly every time the deadlines for her initial disclosures, discovery, and medical documentation approached, all the while never attempting to fulfill her obligation to respond to discovery requests. Through these filings, Complainant effectively obtained four additional months after the May 23, 2025 deadline had passed to produce discovery or to demonstrate her inability to comply with that deadline. Because Complainant failed to make that showing, the record supports a finding of willfulness, and we cannot conclude that the ALJ abused his discretion in dismissing her complaint.

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95 Order Denying Motion to Extend and Granting Motion to Dismiss at 4; Resp. Second Mot. for Relief at 5-6; Resp. Br. at 14-15.

96 Resp. Second Mot. for Relief at 5-6; Resp. Br. at 14-15.

97 Resp. Second Mot. for Relief at 5-6; Resp. Br. at 14-15. We take judicial notice that Complainant partially participated in discovery in her related Eastern District of Michigan action against Respondent between February and December 2025, a period overlapping with the discovery failures at issue here. *See Jones v. Delta Air Lines, Inc.*, No. 2:24-cv-11224, 2026 WL 1091186, at *3 (E.D. Mich. Apr. 22, 2026), appeal docketed, No. 26-1468 (6th Cir. May 22, 2026); *see also Trivedi v. Gen. Elec. & GE Healthcare*, ARB No. 2022-0026, ALJ No. 2022-SOX-00005, slip op. at 3 n.12 (ARB Aug. 24, 2022) ("Pursuant to Rule 201, Federal Rules of Evidence, the ARB takes judicial notice of the fact of these court filings and the content of judicial decisions related thereto, all adjudicatory facts not subject to reasonable dispute and able to be accurately and readily determined from a review of sources whose accuracy cannot reasonably be questioned, including the cited courts' published dockets.").

The record here also illustrates that other relevant factors sustain a determination the dismissal fell within the ALJ's discretion.[98] The ALJ warned Complainant her complaint could be dismissed as a sanction if she did not comply with discovery in written orders and verbally in plain terms.[99] Respondent was prejudiced for months in seeking Complainant's cooperation in the attempt to establish a joint discovery plan and in pursuing her discovery responses.[100] Complainant impeded any progress in the matter, interfering with the judicial process.[101] Moreover, given the presence of these other relevant factors and the pattern of Complainant's disobedience, the ALJ was not required to impose lesser sanctions first or to expressly discuss their efficacy.[102]

We turn to Complainant's argument that the ALJ erred in his review of the documentation she submitted from her providers in support of her request for a reasonable accommodation under Section 504 of the Rehabilitation Act.[103] We have explained the application of Section 504 to United States Department of Labor programs and functions.[104] The regulations direct complaints alleging Section 504 violations to the Department's Civil Rights Center.[105] The Board does not have jurisdiction over claims of alleged violations of the Rehabilitation Act.[106] Accordingly, we will not address Complainant's Section 504 arguments.[107]

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98 *See Keller,* ARB No. 2025-0008, slip op. at 8-10.

99 *See id*. at 9.

100 *See id.*

101 *See id.*

102 *See Harmon v. CSX Transp., Inc.*, 110 F.3d 364, 368-69 (6th Cir. 1997) (explaining that consideration or imposition of lesser sanctions is a factor in reviewing dismissal, but is not a prerequisite to affirmance where the record reflects a clear pattern of delay or contumacious conduct).

103 Comp. Opening Brief at 2-4.

104 *White v. Marten Transp. Ltd.*, ARB No. 2026-0061, ALJ No. 2025-STA-00109, slip op. at 6-7 (ARB Sept. 11, 2026).

105 *Id*. at 6.

106 *Id*. at 7.

107 Although we need not decide the issue here, it bears noting that, broad as Section 504's protections are, they are not unlimited. For example, 29 C.F.R. § 33.9 provides that Section 504 does not require the Department to take any action that would result in a "fundamental alteration in the nature of a program or activity." The fundamental-alteration defense is a core limitation under both Section 504 and the ADA. *See Alexander v. Choate*, 469 U.S. 287, 299-300 (1985); *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 688-89

The ALJ acted within his discretion to dismiss Complainant's complaint owing to her persistent failure to supply ordered discovery.

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

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge

(2001). It could be reasonably argued that permitting endless litigation based on repeated, open-ended accommodation requests of uncertain purpose and indefinite duration would undermine a fundamental purpose of these proceedings: to evaluate and adjudicate claims arising under the statutes entrusted to our review and to bring them to an orderly and timely resolution. *See* 29 C.F.R. §§ 18.10(a), 18.12(b), 18.92 (2026); Secretary's Order 01-2020, 85 Fed. Reg. at 13186-87.