U.S. Department of Labor

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

IN THE MATTER OF:

EDWARD FARLEY,

COMPLAINANT,

v.

DELTA AIRLINES, INC.,

RESPONDENT.

ARB CASE NO. 2026-0064

ALJ CASE NO. 2025-AIR-00023
ALJ JERRY R. DeMAIO

DATE: September 8, 2026

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

DECISION AND ORDER DENYING INTERLOCUTORY APPEAL

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] On August 20, 2026, Complainant Edward Farley filed a petition for interlocutory review with the Administrative Review Board (ARB or Board) asking the Board to review an August 20, 2026 Order Denying Motion for Reconsideration issued by a United States Department of Labor Administrative Law Judge (ALJ). For the following reasons, we deny Complainant's petition for interlocutory review.

BACKGROUND

The proceedings before the ALJ have been marred by discovery disputes between the parties, including an ongoing dispute regarding Complainant's deposition. It appears that Respondent Delta Airlines, Inc., has been attempting to depose Complainant since at least November 2025, but that Complainant has

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

consistently and fervently resisted Respondent's efforts.[2] Even when the ALJ has ordered Complainant to cooperate and appear, Complainant has filed motions to stay, vacate, and reconsider in an attempt to postpone his deposition.[3]

Among other things, Complainant has insisted to the ALJ that he should not be required to sit for a deposition until Respondent has fulfilled its own discovery obligations and the administrative record is otherwise complete.[4] The ALJ has repeatedly instructed Complainant that the proceedings were de novo, that the record would have to be developed through the mutual participation in discovery by both parties, and that Complainant may not delay his deposition or his own discovery responses because he wanted to obtain additional or complete discovery from Respondent.[5]

Eventually, Respondent requested the ALJ dismiss this case due to Complainant's failure to participate in discovery.[6] On July 22, 2026, the ALJ held Respondent's motion to dismiss in abeyance, continued the hearing, denied Complainant's most recent motion to stay the proceedings, and ordered that by August 5, 2026, Complainant must respond, in full, to Respondent's discovery requests and work with Respondent to schedule his deposition.[7] The ALJ warned that "[a]ny further failure by the Complainant to provide written discovery, to coordinate with Respondent to reschedule his deposition, to provide a status update to the Court regarding the rescheduled deposition, or to appear at a scheduled deposition, will result in Respondent's Motion to Dismiss being granted."[8]

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[2] Order Approving Protective Order and Denying Motion to Compel Without Prejudice at 3; Omnibus Discovery Order at 1-3; Order on Motion to Dismiss at 1-3.

[3] Omnibus Order Denying Emergency Motions at 2-3; Order Denying Emergency Motion for Reconsideration at 1-4; Order Denying Emergency Motion to Stay at 1-2; Order Denying Motion to Vacate at 1-2; Order Denying Motion for Reconsideration at 1-3.

[4] Order Approving Protective Order and Denying Motion to Compel Without Prejudice at 3; Omnibus Order Denying Emergency Motions at 2; Order Denying Emergency Motion for Reconsideration at 1-2; Order to Show Cause at 1; Order on Motion to Dismiss at 2.

[5] Order Approving Protective Order and Denying Motion to Compel Without Prejudice at 3-4; Omnibus Order Denying Emergency Motions at 4; Order Denying Emergency Motion for Reconsideration at 3-4; Order to Show Cause at 2-3; Order on Motion to Dismiss at 2; Order Denying Motion for Reconsideration at 2.

[6] Order to Show Cause at 1-2.

[7] Order on Motion to Dismiss at 4-5.

[8] *Id.* at 4.

The next day, July 23, 2026, Complainant filed an Emergency Motion to Stay Proceedings and Temporarily Suspend the July 22, 2026, Order. The ALJ denied that motion in an order dated July 30, 2026.[9] The ALJ again cautioned that he "expects Farley to comply with the requirements of [the previous] Order, and a failure to do so, as stated, will result in the granting of the Motion to Dismiss."[10]

The next day, July 31, 2026, Complainant filed another motion asking the ALJ to revisit his discovery instructions. The ALJ denied this motion as well, although the ALJ extended the deadline to respond to discovery and agree to a deposition date to August 21, 2026, due to service issues.[11]

Less than a week later, on August 12, 2026, Complainant filed another motion requesting, for the third time, that the ALJ reconsider the order that Complainant answer discovery and agree to a date for his deposition. The ALJ denied this motion, too, in an order dated August 20, 2026.[12]

The same day, Complainant emailed the Board an "Emergency Petition for Administrative Review Board Interlocutory Review of the August 20, 2026, Order Denying Reconsideration, Request for Expedited Consideration, and Request for Certification" (Petition). On August 21, 2026, Complainant also emailed the Board a "Supplemental Notice Regarding Material Evidentiary Discrepances, Missing Records, Documentary Provenance, Regulatory Noncompliance, and Unresolved Standards" (Supplemental Notice). On August 26, 2026, Complainant filed an "Emergency Motion for Stay Pending Interlocutory Review and Application for Expedited Consideration" (Emergency Motion) via the Board's Electronic Filing and Service System. Finally, on September 2, 2026, Complainant filed a "Supplemental Notice of Subsequent Development, Motion for Expedited Consideration, and Supplemental Memorandum in Support of Request for Interlocutory Review and Temporary Stay" (Second Supplemental Notice).

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9 Order Denying Emergency Motion to Stay at 1-2.

10 *Id.* at 2.

11 Order Denying Motion to Vacate at 1-2.

12 Order Denying Motion for Reconsideration at 1-3.

DISCUSSION

1. Petition for Interlocutory Review

In the Petition, Complainant seeks emergency interlocutory review of the ALJ's order compelling him to sit for a deposition and respond to outstanding discovery requests. The Board's delegated authority includes the consideration and disposition of interlocutory appeals "in exceptional circumstances, provided such review is not prohibited by statute."[13] The Board takes the Secretary's limitation seriously and has emphasized repeatedly that interlocutory appeals are generally disfavored and that there is a strong policy against piecemeal appeals.[14]

When a party seeks interlocutory review of an ALJ's non-final order, the Board has elected to look to the interlocutory review procedures used by federal courts, including requesting the trial court certify issues involving a controlling question of law for immediate appeal in accordance with 28 U.S.C. § 1292(b).[15] Complainant asked for ALJ certification under 28 U.S.C. § 1292(b) on or about August 20, 2026, but it appears that the ALJ had not granted that request by the date of this appeal.[16]

If a party has failed to obtain ALJ certification, the Board may still consider reviewing an interlocutory order that meets the "collateral order" exception.[17] The collateral order exception applies if the appealed decision belongs to that "small class [of decisions] which finally determine 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

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13 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)).

14 *Gadbury v. Park Aerospace Corp.*, ARB No. 2026-0024, ALJ No. 2025-SOX-00022, slip op. at 3 (ARB Apr. 17, 2026) (citation omitted).

15 *Id.* at 4 (citation omitted).

16 Complainant states that "[t]o the extent the Board determines that certification by the [ALJ] is required or materially appropriate, Complainant respectfully requests that the Board direct or permit the [ALJ] to certify the following question for interlocutory review . . . ." Petition at 9. The Board will not direct the ALJ to consider certification, which is an issue firmly in the ALJ's discretion. *See* 28 U.S.C. § 1292(b).

17 *Gadbury*, ARB No. 2026-0024, slip op. at 4.

until the whole case is adjudicated."[18] To fall within the "collateral order" exception, the order appealed must: (1) conclusively determine the disputed question; (2) resolve an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment.[19] The Board has held many times that "we must strictly construe the collateral order exception to avoid the serious 'hazard that piecemeal appeals will burden the efficacious administration of justice and unnecessarily protract litigation.'"[20] The Board has accepted interlocutory appeals, but only in rare circumstances.[21]

Setting aside the first two factors of the collateral order test, Complainant cannot show that the ALJ's discovery orders would be effectively unreviewable on appeal from a final judgment. To be "effectively unreviewable," the right sought to be vindicated must "be, for all practical and legal purposes, destroyed if it were not vindicated prior to final judgment."[22] As long as the rights at issue "can be adequately vindicated by other means, the chance that the litigation at hand might be speeded, or a particular injustice averted, does not provide a basis for" immediate appellate review of an interlocutory order.[23] In particular, the Board has repeatedly declined to interfere with an ALJ's procedural and discovery orders in interlocutory

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18 *Id.* (citation omitted).

19 *Id.* (citation omitted).

20 *Johnson v. Siemens Bldg. Techs., Inc.*, ARB No. 2007-0010, ALJ No. 2005-SOX-00015, slip op. at 5 (ARB Jan. 19, 2007) (quoting *Corrugated Container Antitrust Litig. Steering Comm. v. Mead Corp.*, 614 F.2d 958, 960 n.2 (5th Cir. 1980)); *accord Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009) (stressing that the collateral order doctrine must "never be allowed to swallow the general rule that a party is entitled to a single appeal, to be deferred until final judgment has been entered.") (internal quotation and citation omitted).

21 *E.g., Dean v. Health Care Dist. of Palm Beach Cnty.*, ARB No. 2025-0055, ALJ No. 2024-AIR-00020 (ARB Sept. 4, 2025) (involving sovereign immunity); *Fagan v. Dep't of the Navy*, ARB No. 2023-0006, ALJ No. 2021-CER-00001 (ARB Feb. 28, 2024) (involving ALJ subpoena authority for third-party witnesses); *Willbanks v. Atlas Air Worldwide Holdings, Inc.*, ARB No. 2014-0050, ALJ No. 2014-AIR-00010 (ARB Mar. 18, 2015) (involving compelled arbitration of AIR21 whistleblower claim); *Jordan v. Sprint Nextel Corp.*, ARB No. 2006-0105, ALJ No. 2006-SOX-00041 (ARB Sept. 30, 2009) (involving attorney-client privilege).

22 *Lattimore v. Alaska Airlines, Inc.*, ARB No. 2025-0089, ALJ No. 2025-AIR-00038, slip op. at 5 (ARB Mar. 9, 2026) (citation omitted).

23 *Id.* (citations omitted).

appeals because they are readily subject to review on appeal from a final judgment.[24]

Complainant objects to being deposed or responding to discovery before Respondent responds in full to his discovery requests and the administrative record is otherwise complete. He argues that being deposed now runs the risk of forcing him to "create substantive [testimonial] evidence, under threat of dismissal, before obtaining the evidence that he contends is necessary to test the regulatory and factual propositions underlying that testimony."[25] Conversely, he contends that if he chooses to not be deposed before the record is complete, the ALJ may dismiss his case.[26] According to Complainant, this makes the matter effectively unreviewable because "[a] later appellate ruling cannot practically erase testimony already given under compulsion, reconstruct the circumstances existing before the deposition, or restore a statutory claim that may have been dismissed for failure to comply with the challenged order."[27]

We disagree with Complainant. If Complainant does not prevail in this action, he can appeal the ALJ's final decision at the conclusion of the proceedings. If we determine at the end of these proceedings that the ALJ erred regarding the orders as to the sequence of discovery or that Complainant was unfairly prejudiced during his deposition, we can remand with instructions that discovery reopen, that discovery take place in a particular sequence, that Complainant's prior testimony is inadmissible and is to be disregarded (in whole or in part), or other instructions and relief that address Complainant's concerns about the sequence or conduct of discovery. Alternatively, if Complainant chooses not to be deposed and the ALJ

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[24] *E.g., Szmurlo v. ThyssenKrupp Elevator*, ARB Nos. 2026-0025, -0026, ALJ No. 2025-SOX-00034, slip op. at 9-14 (ARB June 23, 2026) (denying interlocutory appeal of orders concerning discovery, sanctions, and subpoenas); *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 8 (ARB Sept. 30, 2022) ("Courts rarely grant interlocutory appeal of discovery orders.") (citations omitted); *Green v. Grand Trunk W. Ry. Co.*, ARB No. 2013-0100, ALJ No. 2013-FRS-00051, slip op. at 1-2 (ARB Feb. 7, 2014) (denying interlocutory appeal of order granting motion to compel discovery and denying request for protective order); *Shirani v. Com/Exelon Corp.*, ARB No. 2003-0028, ALJ No. 2002-ERA-00028, slip op. at 1-2, 4 (ARB Dec. 10, 2002) (denying interlocutory appeal of order denying respondent's effort to prevent its CEO from being deposed).

[25] Petition at 5.

[26] *Id.*

[27] *Id.*

dismisses this action as a sanction, we can review that decision, too, and if we find error, can reopen the case and remand for further proceedings with appropriate instructions and relief.[28] Either way, if we find error,[29] we can fashion appropriate relief that adequately vindicates Complainant's rights and we find no exceptional circumstances warranting immediate review.

2. Supplemental Notices

In the Supplemental Notice, Complainant raises concerns about the completeness of the record before the ALJ as it relates to the merits of his case and Respondent's defenses thereto. Complainant asks the Board to "recognize the distinction between an employer's **narrative concerning what occurred** and the **contemporaneous records and governing requirements capable of establishing what actually occurred**,"[30] and to recognize that "**a pattern of missing documents, delayed records, contradictory contemporaneous evidence, unexplained chronology, and representations concerning documents that cannot be produced presents an evidentiary issue requiring examination rather than automatic acceptance of the employer's narrative**."[31] Complainant raises similar concerns in the Second Supplemental Notice.[32] Complainant's arguments about the record, the merits of this case, and the Respondent's defenses or factual assertions are premature and not properly before the Board. The sole issue at this stage is whether the Board will accept Complainant's interlocutory appeal concerning the ALJ's discovery orders directing him to respond to discovery and sit for a deposition. As set forth above, we have

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28 In the Second Supplemental Notice, Complainant states that Respondent renewed its request for dismissal with the ALJ on August 31, 2026, due to Complainant's continued failure to abide by the ALJ's discovery orders. Second Supplemental Notice at 1. Complainant states that therefore "[t]he consequences Petitioner previously sought to prevent are no longer speculative," because Respondent "is presently requesting dismissal based upon the very discovery controversy for which Petitioner has sought review and temporary relief." *Id*. at 5. Again, if the ALJ ultimately dismisses Complainant's case due to a failure to comply with discovery orders, Complainant may appeal that decision.

29 We emphasize that we take no position at this time on whether the ALJ committed error in any discovery order.

30 Supplemental Notice at 1 (emphasis original).

31 *Id.* at 10-11 (emphasis original).

32 Second Supplemental Notice at 2-5, 8-10.

denied Complainant's interlocutory appeal, so we will not address the merits and record issues raised in the Supplemental Notice.

In the Supplemental Notice, Complainant also raises a "separate and independently significant evidentiary problem concern[ing] Complainant's OSHA submissions . . . ."[33] Complainant states that Respondent represented that it responded to his submissions to OSHA, but that he has not received the responses.[34] Relatedly, Complainant contends that the "OSHA administrative record contains substantial vacancies and unexplained gaps concerning material submissions, responses, investigative materials, and findings relevant to the chronology at issue."[35] Once again, these issues are not properly before the Board. If Complainant believes he has not received discovery to which he is entitled, he can seek relief from the ALJ and, if necessary, address the issue with the Board at the end of these proceedings.

3. Emergency Motion and Second Supplemental Notice

In the Emergency Motion, Complainant states that Respondent has selected September 17, 2026, for his deposition and has "threatened to report alleged noncompliance to the [ALJ] unless Complainant provides additional confirmations on an accelerated schedule."[36] Complainant asks the Board to stay the "**discovery and deposition obligations**" pending resolution of this appeal.[37] In the Second Supplemental Notice, Complainant likewise asks the Board to expedite its review of his appeal and enter a "temporary administrative stay" while the Board determines whether to accept interlocutory review.[38] Because we have now resolved this appeal, we deny the Emergency Motion and other requests for relief as moot.

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33 Supplemental Notice at 6.

34 *Id.*

35 *Id.*

36 Emergency Motion at 1.

37 *Id.* at 1 (emphasis original).

38 Second Supplemental Notice at 14.

CONCLUSION

For the foregoing reasons, we **DENY** Complainant's interlocutory appeal and **DENY** the Emergency Motion and Complainant's other requests for relief from the Board.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

ELLIOT M. KAPLAN
Administrative Appeals Judge