U.S. Department of Labor

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

IN THE MATTER OF:

MICHAEL PAYNE,

COMPLAINANT,

v.

GLOBAL MEDICAL RESPONSE, d/b/a REACH MEDICAL SERVICES, ET AL.,

RESPONDENT.

ARB CASE NO. 2026-0072

ALJ CASE NO. 2025-AIR-00029
ALJ EVAN H. NORDBY

DATE: September 29, 2026

Before JOHNSON, Chief Administrative Appeals Judge, and BURRELL, 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 September 16, 2026, Complainant Michael Payne filed a petition for interlocutory review (Petition) with the Administrative Review Board (ARB or Board) asking the Board for discovery-related relief in an action currently pending before a United States Department of Labor Administrative Law Judge (ALJ). For the following reasons, we deny Complainant's Petition.

BACKGROUND

On or about February 1, 2025, Complainant filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Respondent Global Medical Response, d/b/a Reach Medical

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

Services, violated the employee protection provisions of AIR21.[2] OSHA dismissed Complainant's complaint by letter dated May 5, 2025, and Complainant requested a hearing before an ALJ.[3]

On March 5, 2026, the ALJ assigned to the case issued an order that, among other things, required the parties to file dispositive motions by June 11, 2026, and to file oppositions to dispositive motions by July 2, 2026.[4] On June 11, 2026, Respondent filed a Motion for Summary Decision with the ALJ, arguing that it was entitled to a decision in its favor as a matter of law. It appears that Complainant did not correctly file an opposition with the ALJ by the July 2, 2026 deadline.

In a July 27, 2026 filing with the ALJ, Complainant stated that he had attempted to request an extension of time from the ALJ via email on June 19, 2026, and had attempted to file a "written report and exhibits" on July 17, 2026.[5] Complainant also stated that he "has very little knowledge of judicial procedures and is trying to represent himself . . . ."[6]

On August 13, 2026, the ALJ issued an Order Vacating Hearing Date, Extending Deadline, and Order to Show Cause Re: Motion for Summary Decision (ALJ Order to Show Cause). In that Order, the ALJ provided detailed information regarding the purpose of and standards for resolving summary decision, the consequences if the ALJ ruled in Respondent's favor, what Complainant must submit in response to the Motion for Summary Decision, and other important information for Complainant as a pro se litigant.[7] The ALJ also extended the time for Complainant to file an opposition to Respondent's Motion for Summary Decision to September 1, 2026, continued the hearing and prehearing conference, and stated that if Complainant needed additional time, he must request an extension in

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2 Notice of Docketing at 1.

3 *Id.*

4 Order Granting Joint Motion for Extension of Discovery and Dispositive Motion Deadlines and to Continue Hearing at 1.

5 Complainant's Opposition to Respondent's Motion to Strike and Request for Continuance of Trial at 1.

6 *Id.*

7 ALJ Order to Show Cause at 2-3.

writing from the ALJ before September 1, with a statement of the "specific reasons that additional time is necessary."[8]

Instead of filing an opposition to the Motion for Summary Decision or requesting an extension of time from the ALJ, Complainant filed a "Request for Appeal" with the ALJ on August 26, 2026.[9] Complainant stated that he "requests an appeal on Motion for Summary Decision," and "requests an appeal and/or extension to seek legal counsel and the court[']s assistance in requesting the legal counsel and respondent to provide the evidence asked for by the complainant which is vital to the cause and they are intentionally withholding from the complainant."[10] Regarding discovery, Complainant explained that Respondent "is still withholding and declining to provide Complainant with vital information and evidence," and that he "is requesting an appeal to enable him to request depositions from witnesses . . . from [Respondent] to provide supporting factual evidence to support the complainant's case . . . ."[11]

On September 2, 2026, the ALJ issued an Order Vacating Deadlines and Referring Interlocutory Appeal to the Administrative Review Board (Referral Order). The ALJ stated that Complainant's Request for Appeal "deprives the trial judge of jurisdiction to proceed with a hearing or act on issues that are the subject of the appeal."[12] The ALJ therefore stated that he was "transmit[ting] the notice of appeal and this case to the" ARB.[13] The ALJ served the Referral Order on the ARB.

On September 10, 2026, the ARB issued an Order to Show Cause (ARB Order to Show Cause) noting the ALJ's service of the Referral Order on the ARB, but explaining that Complainant was required to submit a petition for review in accordance with 29 C.F.R. § 1979.110(a) if Complainant desired the Board to review

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8 *Id.* at 3.

9 The Request for Appeal was dated August 20, 2026 and docketed on August 26, 2026, but includes a certificate of service stating that "Claimant[']s findings of fact" were electronically submitted on August 13, 2026.

10 Complainant's Request for Appeal at 1-2.

11 *Id.* at 1.

12 Referral Order at 1-2 (citations omitted).

13 *Id.* at 2.

any order of the ALJ.[14] The ARB directed Complainant to file a proper petition for review within ten days.[15]

Complainant filed the Petition on September 16, 2026, stating that he "is requesting an appeal to enable him to request depositions from witnesses . . . from [Respondent] to provide supporting factual evidence to support the complainant's case and to seek legal counsel to assist in this case against [Respondent]," that Respondent "is still withholding and declining to provide Complainant with vital information and evidence," and that he "requests an appeal and/or extension to seek legal counsel and the Review Board[']s assistance in requesting the legal counsel and respondent to provide the evidence asked for by the complainant which is vital to the cause and they are intentionally withholding from the complainant."[16] Respondent filed a "Reply to Complainant Michael Payne's Response to Order to Show Cause" on September 25, 2026, urging the Board to deny Complainant's appeal.

DISCUSSION

Because the ALJ has not yet issued a decision fully disposing of all claims in Complainant's complaint, Complainant's Petition is for interlocutory review (i.e., review of a non-final decision).[17] The Board's delegated authority includes the consideration and disposition of interlocutory appeals "in exceptional circumstances, provided such review is not prohibited by statute."[18] 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.[19]

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14 ARB Order to Show Cause at 1-2.

15 *Id.* at 2.

16 Petition at 1-2. Complainant also filed "Proposed Findings of Fact and Conclusions Show Cause" with the ARB on September 20, 2026, which address the underlying merits of his case and have no bearing on this appeal.

17 *See Gloss v. Tata Chems. N. Am.*, ARB No. 2022-0054, ALJ No. 2020-CAA-00008, slip op. at 2 (ARB Sept. 20, 2022).

18 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)).

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

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).[20] It does not appear that Complainant has asked for or received certification from the ALJ under 28 U.S.C. § 1292(b).[21]

If a party has failed to obtain ALJ certification, the Board may still consider reviewing an interlocutory order that meets the "collateral order" exception.[22] 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 until the whole case is adjudicated."[23] 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.[24]

Here, the ALJ has not issued any order resolving the discovery or procedural matters for which Complainant seeks relief or ruled on the Motion for Summary Decision. Accordingly, there is no order before the Board that could satisfy the collateral order doctrine. In his Petition, Complainant: (1) argues that Respondent has not provided "vital information and evidence" he needs for his case; (2) asks for depositions from witnesses; and (3) asks for an extension of time to seek legal counsel and to obtain the discovery that he believes he needs. It does not appear that Complainant properly filed any motions with the ALJ requesting this relief, nor does it appear that the ALJ issued an order bearing on or restricting

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

21 The Referral Order does not constitute or meet the requirements of a certification under 28 U.S.C. § 1292(b).

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

23 *Id.* (citation omitted).

24 *Id.* (citation omitted).

Complainant's ability to do so.[25] If Complainant wishes to conduct additional discovery through depositions or otherwise, wants to compel Respondent to respond to his discovery requests, and/or requires more time to conduct discovery, prepare his opposition to Respondent's Motion for Summary Decision,[26] and/or seek legal counsel, he can present his requests and arguments in support thereof to the ALJ in properly filed motions. If necessary and appropriate, the ARB then may address these, and any other relevant issues raised by the parties, at the conclusion of these proceedings after the ALJ has issued a final decision.[27]

The ALJ Order to Show Cause is also not subject to immediate interlocutory review. As summarized above, the ALJ Order to Show Cause continued the hearing and prehearing conference, extended Complainant's time to oppose Respondent's Motion for Summary Decision, provided detailed information on how to oppose the Motion for Summary Decision, and invited Complainant to file a motion for extension if he believed he needed additional time. None of these orders or issues is "effectively unreviewable" on appeal from a final judgment. Again, if necessary and appropriate, Complainant may file an appeal at the conclusion of these proceedings after the ALJ has issued a final decision. If the ARB determines at that time that the ALJ erred with respect to the procedural handling of the Motion for Summary

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[25] Arguably, the ALJ could have interpreted Complainant's "Request for Appeal" as a motion to the ALJ instead of an appeal to the ARB because it was filed with and addressed to the ALJ and identified various relief in discovery and an extension of time that would be properly addressed or provided by the ALJ. The ALJ could have also attempted to clarify with Complainant whether he indeed intended to appeal to the ARB or whether he instead wanted relief from the ALJ.

[26] Under the OALJ Rules of Practice and Procedure, if Complainant believes that he cannot present facts essential to justify his opposition to the Motion for Summary Decision, whether because Respondent has not adequately responded to discovery or otherwise, he can state as much to the ALJ by affidavit or declaration, and the ALJ may, in his discretion, defer considering or deny the Motion for Summary Decision, allow time to take discovery, or issue any other appropriate order. 29 C.F.R. § 18.72(d).

[27] *C.f. Friesner v. Family Dollar*, ARB Nos. 2026-0045, -0059, ALJ No. 2025-SOX-00010, slip op. at 6 (ARB Aug. 20, 2026) ("The Board has repeatedly declined to interfere with an ALJ's procedural and discovery orders in interlocutory appeals because they are readily subject to review on appeal from a final judgment.") (citations omitted); *Szmurlo v. ThyssenKrupp Elevator*, ARB Nos. 2026-0025, -0026, ALJ No. 2025-SOX-00034, slip op. at 12-13 (ARB June 23, 2026) ("With respect to these and Complainant's other allegations of error regarding discovery, we note that courts rarely grant interlocutory appeal of discovery orders.") (internal quotations and citations omitted).

Decision or Complainant's opposition thereto, the ARB can remand with instructions and fashion appropriate relief.

CONCLUSION

For the foregoing reasons, we **DENY** Complainant's interlocutory appeal.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge