U.S. Department of Labor

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

IN THE MATTER OF:

TARA ORECHOVESKY,

COMPLAINANT,

v.

CROSS RIVER BANK,

RESPONDENT.

ARB CASE NO. 2026-0071

ALJ CASE NO. 2025-CFP-00016
ALJ THEODORE W. ANNOS

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 Consumer Financial Protection Act and its implementing regulations.[1] On September 6, 2026, Complainant Tara Orechovesky filed a petition for interlocutory review (Petition) with the Administrative Review Board (ARB or Board) asking the Board to review an Order on Complainant's Motion to Compel, Complainant's Motions for Leave, Respondent's Motion for Protective Order, and Respondent's Motion for Sanctions (ALJ Order) issued by a United States Department of Labor Administrative Law Judge (ALJ) on September 3, 2026. For the following reasons, we deny Complainant's Petition.

BACKGROUND

The proceedings before the ALJ have been largely dominated by an ongoing discovery dispute regarding Complainant's request that Respondent Cross River Bank produce her personnel file. Respondent maintains that it has produced the file

[1] 12 U.S.C. § 5567; 29 C.F.R. Part 1985 (2026).

to her; Complainant insists that Respondent's production is incomplete.[2] This issue, among others, prompted Complainant to file eight motions to compel and the parties to cross-file motions for sanctions with the ALJ.[3]

On September 3, 2026, the ALJ issued the ALJ Order attempting to comprehensively address these myriad issues. The ALJ stated that Complainant had "resorted to filing a continuous, escalating stream of motions that at this point lead the tribunal to question whether they are being filed in good faith," despite the ALJ's prior warnings to Complainant that repetitive filings could warrant sanctions.[4] The ALJ also observed that Complainant's eighth and most recent motion to compel was filed "mere days" after the ALJ previously denied a motion seeking identical relief, stating that it was "substantively repetitive of the one that preceded it, suffers from the same fatal defects, and offers no new legal or factual basis warranting reconsideration."[5] The ALJ also observed that Complainant violated the terms of a Protective Order and had, "in the days following the [ALJ's prior order on Complainant's] seventh motion to compel, [ ] inundated Respondent's counsel with more than thirty discovery-related emails."[6]

Accordingly, the ALJ ordered the following:

(1) Complainant's eighth motion to compel was denied;
(2) Respondent's motion for a protective order and motion for sanctions were granted in part;
(3) Complainant was prohibited from serving any further written discovery;
(4) All written discovery deficiencies and requests Complainant identified or served from July 29, 2026, to the date of the ALJ Order were stricken, and Respondent was not required to respond;
(5) Complainant was "prohibited from filing any further motions without prior written authorization from" the ALJ, which she could obtain by sending an email to the ALJ's Attorney Advisor and copying Respondent's counsel;
(6) Except for scheduling matters, Complainant could send no more than one consolidated communication to Respondent's counsel per week; and

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2 *See* ALJ Order at 1-2.

3 *Id.*

4 *Id.* at 2.

5 *Id.* at 3.

6 *Id.*

(7) All confidential materials that Complainant submitted to the ALJ were sealed from public access.[7]

The ALJ also warned that failure to comply with the ALJ's orders "may result in further sanctions, up to and including dismissal."[8]

On September 6, 2026, Complainant filed the Petition with the ARB, seeking immediate review of the ALJ Order. On the same day, Complainant also filed a copy of "Complainant's Motion for Authorization and Certification for interlocutory Review and Complainant's Motion for Recusal and Reassignment" (Motion for Authorization), which was filed with and addressed to the ALJ. Complainant then also filed: (1) a "Motion for Consideration of Additional Evidence on Appeal" (Motion for Additional Evidence) on September 9, 2026; (2) a "Motion for Supplemental Request for Procedural Guidance and Precedent" (Supplemental Motion) on September 9, 2026; (3) "Complainant's Short Brief Regarding Preauthorization, Pending Stay, and Recusal[;] Motion to Leave for 29 C.F.R. § 18.10[;] Supplemental Evidence and Motion to Expedite ARB Case Number: ARB-2026-0071" (Short Brief) on September 10, 2026; and (4) a "Request for Certification of Additional Controlling Questions of Law and Motion for Leave for Additional Exhibits" (Request for Certification) on September 19, 2026. Complainant has also sent the Board several emails.[9] Respondent filed an "Omnibus Opposition to Complainant's Motions for Recusal and Reassignment, for Certification of Interlocutory Review, and for Related Relief" on September 25, 2026.

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7 *Id.* at 3-4.

8 *Id.* at 4.

9 Complainant emailed the Board five times on September 8, 2026, without copying opposing counsel. Those emails were largely duplicative and repetitive of the issues raised in her Petition and other filings. The Board notified Complainant on September 9, 2026, that it would not accept those emails in this appeal, and that all filings must be made using the Board's Electronic Filing and Service (EFS) System, by mail, or by personal or commercial delivery. Between September 9 and 15, 2026, Complainant sent the Board several more emails regarding technical questions about filing via EFS. Complainant has also copied the Board on an email directed to the ALJ's office and on an email to the EFS technical support team.

DISCUSSION

1. Petition for Interlocutory Review

The Board's delegated authority includes the consideration and disposition of interlocutory appeals "in exceptional circumstances, provided such review is not prohibited by statute."[10] 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.[11]

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).[12] Complainant asked the ALJ to certify her interlocutory appeal under 28 U.S.C. § 1292(b) on or about September 6, 2026, but it appears that the ALJ had not granted that request by the date of this appeal.[13]

If a party has failed to obtain ALJ certification, the Board may still consider reviewing an interlocutory order that meets the "collateral order" exception.[14] 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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[10] 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)).

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

[12] *Id.* at 4 (citation omitted).

[13] Complainant asks the Board to "certify" certain questions for interlocutory review, and, at times, refers to the standard for certifying an issue for review under 28 U.S.C. § 1292(b) in explaining why she believes the ARB should consider her appeal. Petition at 4-6; Request for Certification at 1-3. It is the ALJ's province to decide whether to certify questions of law for interlocutory appeal under the standard identified in 28 U.S.C. 1292(b). If the ALJ had certified questions for the ARB, the ARB could have then determined, in its discretion, whether to take the appeal. Without certification, though, the ARB considers whether the appeal meets the collateral order test, discussed herein and referenced in Complainant's Petition. *See* Petition at 6-7.

[14] *Gadbury*, ARB No. 2026-0024, slip op. at 4.

until the whole case is adjudicated."[15] 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.[16] 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.'"[17] The Board has accepted interlocutory appeals, but only in rare circumstances.[18]

Complainant challenges several aspects of the ALJ Order and other facets of discovery procedures in this case:[19] (1) the "categorical prohibition against Complainant filing any further motions without prior written authorization from the Tribunal," which Complainant contends is not justified by the circumstances of the case, is not consistent with the OALJ Rules of Practice and Procedure, is overly broad, and creates "procedural asymmetry" because Respondent is not subject to the same restriction;[20] (2) the ALJ's order sealing aspects of her personnel file, "without

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15 *Id.* (citation omitted).

16 *Id.* (citation omitted).

17 *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)).

18 *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).

19 Complainant began her Petition by stating that it is "directed principally to one narrow legal issue: the scope and legal effect of the Order's categorical prohibition against Complainant filing any further motions without prior written authorization from the Tribunal." Petition at 1. Despite purporting to limit the scope of her appeal, Complainant goes on to raise a number of other issues and orders with which she takes exception in her Petition and subsequent filings.

20 *Id.* at 1-5; *see also* Supplemental Motion at 1-3.

making the findings and balancing determination required by" the OALJ Rules of Practice and Procedure;[21] (3) the ALJ's refusal to order Respondent to produce additional records that Complainant believes are part of her personnel file;[22] (4) Respondent scheduling her deposition for October 30, 2026, which she says is after the deadline set by the ALJ for the completion of discovery;[23] (5) the ALJ's "characterization" of some of her conduct in the ALJ Order;[24] and (6) Respondent using "direct after-hours communications [ ] rather than the required formal filing and service process."[25]

Setting aside the first two factors of the collateral order test, Complainant cannot show that the limitations imposed by the ALJ in the ALJ Order or the other discovery matters for which she seeks relief 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."[26] 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.[27]

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21 Petition at 5; *see also* Supplemental Motion at 1, 3-4.

22 Petition at 4; *see also* Supplemental Motion at 5; Request for Certification at 2.

23 Request for Certification at 1-2.

24 *Id.* at 2.

25 *Id.*

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

27 *Id.* (citations omitted).

The Board and federal tribunals have consistently denied interlocutory review in cases involving filing restrictions,[28] protective orders,[29] responses to discovery requests,[30] and other discovery and procedural matters of the type raised by Complainant in her filings with the Board.[31] If Complainant does not prevail in this action, she 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 in restricting Complainant's ability to file, in allowing documents to be marked and treated as confidential, in not ordering Respondent to produce additional documents, or in any other aspect of discovery, and we determine that Complainant was unfairly prejudiced by the ALJ's orders (or lack thereof), we can remand with instructions that discovery reopen, that filings be accepted by the ALJ, and/or with other instructions and relief that address Complainant's concerns about the conduct of discovery or motions practice. Thus, at the end of these proceedings, we are

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[28] *E.g., Kinnell v. Kansas*, 308 F. App'x 249, 249-50 (10th Cir. 2009); *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1054-56 (9th Cir. 2007); *Lattimore*, ARB No. 2025-0089, slip op. at 2, 6; *Ashcraft v. First Citizens Bank*, ARB Nos. 2026-0008, -0017, ALJ No. 2025-SOX-00035, slip op. at 4-5, 11 (ARB Jan. 30, 2026).

[29] *E.g., In re Terrorist Attacks on Sept. 11, 2001*, 152 F.4th 396, 399, 402-03 (2d Cir. 2025); *Larson v. Family Dollar*, ARB No. 2026-0045, ALJ No. 2025-SOX-00010, slip op. at 3, 6-8 (ARB July 17, 2026); *Priddle v. United Airlines, Inc.*, ARB No. 2021-0064, ALJ No. 2020-AIR-00013, slip op. at 2-3, 8-10 (ARB Jan. 26, 2022). Indeed, the fact that the ALJ entered the protective order and sealed Complainant's personnel file reduces the exigency of any appeal, because the risk of harm from improper public disclosure is not present. *See Priddle*, ARB No. 2021-0064, slip op. at 9-10 (rejecting employer's argument that disclosure of records in discovery would cause irreparable harm in part because the records would be subject to protective order which would not "allow the reports to be disseminated to the public at large, to be used freely, or to be used for an improper purpose beyond the scope of this litigation"). It is also not clear what harm Complainant alleges flows from the Protective Order or seal—she does not allege that Respondent denied her access to documents or information because of the Protective Order or that she may not use confidential documents in this litigation.

[30] *E.g., Szmurlo v. ThyssenKrupp Elevator*, ARB Nos. 2026-0025, -0026, ALJ No. 2025-SOX-00034, slip op. at 2-3, 11-14 (ARB June 23, 2026).

[31] *E.g., 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*, ARB Nos. 2026-0025, -0026, slip op. at 12-13 ("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).

capable of fashioning appropriate relief that adequately vindicates Complainant's rights and we find no exceptional circumstances warranting immediate review.[32]

2. Other Requests for Relief

In her various filings with the Board, Complainant also asks for other relief, including considering "additional evidence" on appeal;[33] "procedural guidance and precedent" concerning aspects of the ALJ Order;[34] expedited processing of this appeal;[35] and an order barring Complainant's deposition, currently scheduled for October 30, 2026, while this interlocutory appeal is pending.[36] Because we deny this interlocutory appeal, these issues are denied as moot.

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[32] In the Motion for Authorization, Complainant asked the ALJ to recuse himself from these proceedings. Motion for Authorization at 4. Because the Motion for Authorization was addressed to and filed with the ALJ, and not the ARB, the issue of recusal is not before us. However, if Complainant intended to seek interlocutory review of the recusal request, we deny it as well. *See Marks v. Conopco, Inc.*, ARB No. 2025-0084, ALJ No. 2025-TAX-00017, slip op. at 4 (ARB Nov. 20, 2025) (citation omitted).

[33] Motion for Additional Evidence at 3; Request for Certification at 4. We note, though, that at least some of the additional evidence Complainant asks the Board to consider—like the Protective Order and the ALJ Order—are already part of the record and could be considered by the Board on appeal.

[34] Supplemental Motion at 1. Although Complainant framed the Supplemental Motion as a request for "procedural guidance and precedent" on certain legal issues, it in effect merely serves as an expansion on her request for interlocutory review of the ALJ Order and other discovery and procedural issues before the ALJ and seeks the same relief that an interlocutory review could provide.

[35] Short Brief at 2-3.

[36] Request for Certification at 4.

CONCLUSION

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

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge