

U.S. Department of Labor

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



IN THE MATTER OF:

JEROME REID,

ARB CASE NO. 2026-0022

COMPLAINANT,

ALJ CASE NO. 2021-ERA-00008

ALJ PATRICIA J. DAUM

v.

DATE: August 11, 2026

**EXELON CORP., LLC/EXELON
GENERATION CO.,**

RESPONDENT.

Appearances:

For the Complainant:

Jerome Reid; *Pro Se*; Syracuse, New York

For the Respondent:

August W. Heckman III, Esq., and Marlie P. Blaise, Esq.; *Morgan Lewis & Bockius LLP*; Princeton, New Jersey; Donald P. Ferraro, Esq.; *Exelon Generation Co., LLC*; Kennett Square, Pennsylvania

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

DECISION AND ORDER

This case arises under the whistleblower protection provisions of the Energy Reorganization Act (ERA), 42 U.S.C. § 5851, and its implementing regulations at 29 C.F.R. Part 24 (2026). On March 24, 2021, Complainant Jerome Reid filed a complaint with the Occupational Safety and Health Administration (OSHA) in which he alleged that Respondent Exelon discriminated against him for engaging in activity protected under the ERA. OSHA dismissed the complaint and Complainant requested a hearing before an Administrative Law Judge (ALJ). On January 25, 2022, the ALJ issued an Order Dismissing Complaint, in which the ALJ dismissed

Complainant's complaint because it was not timely filed with OSHA and because it failed to state a claim under the ERA. Complainant appeals the ALJ's Order Dismissing Complaint to the Administrative Review Board (ARB or Board). For the reasons that follow, we affirm the ALJ's determination that Complainant's OSHA complaint was untimely.

BACKGROUND

1. History of Complainant's Employment and Prior Claims Against Owners of the Nine Mile Point Unit 2 Nuclear Power Plant

Complainant was employed as a Nuclear Auxiliary Operator by Niagara Mohawk Power Corporation (Niagara Mohawk) at its Nine Mile Point Unit 2 nuclear power plant (Nine Mile Point Unit 2 or Nine Mile Point) from 1985 to 1989.¹ On September 13, 1989, while Complainant was still employed by Niagara Mohawk at Nine Mile Point, Complainant and Niagara Mohawk entered into a settlement agreement to resolve EEOC and OFCCP claims Complainant had filed against the company.² Complainant's employment at Nine Mile Point was later terminated effective March 18, 2002.³

Since his 2002 termination, Complainant has not been employed as a regular full-time employee by Niagara Mohawk or any other company that has

¹ May 20, 2021 OSHA Determination Letter at 1.

² Complainant's Motion to Reject Respondent's Motion for Dismissal at 4-5. In that settlement agreement, Complainant agreed to withdraw multiple pending claims against Niagara Mohawk, was placed in the position of Drafting Technician, and was to be allowed to return to the position of Auxiliary Operator at Nine Mile Point Unit 2 after six months if he met medical suitability requirements and requested a transfer in March 1990. September 13, 1989 Settlement Agreement at 1-2.

³ Order Dismissing Complaint at 3 n.3. The ALJ's Order Dismissing Complaint states that Niagara Mohawk terminated Complainant in 2002 for performance deficiencies. *Id.* Constellation Energy purchased Nine Mile Point from Niagara Mohawk in December 2000 and Complainant has alleged he became Constellation's employee at that point. *See Reid v. Exelon Corp.*, 2018 WL 2441744, Civil No. 17-4043 (RBK/AMD), at *1 (D.N.J. May 30, 2018). Respondent has stated Complainant was not employed at Nine Mile Point at the time of purchase and never became an employee of Constellation or of any of its affiliates. April 22, 2021 Exelon Letter to State of New York Worker's Compensation Board at 1-2.

subsequently acquired ownership of Nine Mile Point Unit 2.⁴ Complainant has filed numerous applications for employment as a nuclear worker with Respondent and the predecessor owners of Nine Mile Point as well as numerous OSHA complaints alleging his unsuccessful applications amount to ERA violations.⁵

2. Procedural History

A. OSHA Complaint

Complainant filed the complaint at issue with OSHA on March 24, 2021.⁶ In it, Complainant alleged that all “[o]wners of Nine Mile Point” nuclear power plant, including Respondent, were bound by the settlement agreement he had entered into with Niagara Mohawk in 1989 and had continuously refused to reinstate his employment per the settlement terms in retaliation for safety complaints he filed while he was employed at Niagara Mohawk.⁷ The complaint alleged the most recent adverse action occurred on December 15, 2020.⁸ Complainant also alleged his 2002 termination was retaliatory and that he had suffered other adverse actions predating his 2002 termination because of his alleged protected activities.⁹

B. Proceedings Before the ALJ

On May 20, 2021, OSHA denied the complaint after finding the complaint was not timely filed and that equitable tolling was not justified.¹⁰ Complainant timely appealed that determination and requested a hearing before an ALJ on June

⁴ Order Dismissing Complaint at 3 n.3. Respondent Exelon acquired Constellation and Nine Mile Point in April 2011. *Reid*, 2018 WL 2441744 at *1. Complainant has filed suit against Constellation and Respondent to enforce the 1989 settlement agreement. *See* Order Dismissing Complaint at 4-6.

⁵ May 20, 2021 OSHA Determination Letter at 1.

⁶ Order Dismissing Complaint at 2.

⁷ May 20, 2021 OSHA Determination Letter at 1; Whistleblower Online Complaint at 1-3.

⁸ May 20, 2021 OSHA Determination Letter at 1; Whistleblower Online Complaint at 3.

⁹ Whistleblower Online Complaint at 3.

¹⁰ May 20, 2021 OSHA Determination Letter at 1.

12, 2021.¹¹ Respondent filed a motion to dismiss before the ALJ, in which it argued the complaint was time-barred and failed to state a refusal-to-hire claim under the ERA.¹² Complainant opposed the motion, and Respondent submitted a reply.¹³ Complainant filed a motion for leave to reply to Respondent’s reply brief, which the ALJ denied on December 2, 2021.¹⁴

C. Third Circuit Petition for Review of the ALJ’s Denial of Complainant’s Motion for Leave to File a Reply

On January 20, 2022, Complainant mailed a “Notice of Appeal[]” to the U.S. Court of Appeals for the Third Circuit in which he alleged he had been “denied discovery” and “due process” during the proceedings before the ALJ.¹⁵ Complainant appealed the ALJ’s December 2, 2021 order denying his motion for leave to file a reply to Respondent’s reply brief in support of its motion to dismiss the complaint before the ALJ.¹⁶ Respondent filed a motion to dismiss, as did the Secretary of Labor, who argued lack of subject matter jurisdiction because the order that Complainant had appealed was not a final, reviewable agency action.¹⁷

D. ALJ Order Dismissing Complaint

On January 25, 2022, while Complainant’s appeal was pending with the Third Circuit, the ALJ issued an Order Dismissing Complaint in which the ALJ found that Complainant’s March 24, 2021 ERA complaint was untimely filed and that Complainant had failed to state a claim for refusal to hire under the ERA.¹⁸

¹¹ Complainant’s June 12, 2021 Objections and Request for Hearing.

¹² Order Dismissing Complaint at 3.

¹³ *See id.* at 2 & 3 n.2.

¹⁴ Order Denying Claimant’s Motion for Leave to File a Reply at 1 (“I see no new matter raised by the Respondent in its Reply to warrant yet another opportunity for the Complainant to argue why his claim should not be dismissed for the reasons alleged by the Respondent.”).

¹⁵ Notice of Appeal[] at 1, *Reid v. OSHA, U.S. Dep’t of Lab.*, No. 22-1166 (3d Cir. Jan. 26, 2022), Dkt. No. 1-1.

¹⁶ *Reid v. OSHA, U.S. Dep’t of Lab.*, No. 22-1166, slip op. at 1 (3d Cir. Aug. 14, 2023).

¹⁷ Secretary of Labor’s Motion to Dismiss Petition for Review for Lack of Subject Matter Jurisdiction at 1, *Reid*, No. 22-1166 (Apr. 7, 2022), Dkt. No. 10.

¹⁸ Order Dismissing Complaint at 4-7.

The ALJ's dismissal order included a Notice of Appeal Rights, which stated that the order would "become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board ("the Board") within 10 business days of the date of this decision."¹⁹ Despite the ALJ's Notice, Complainant did not appeal to the Board at that time.

E. Third Circuit Order Dismissing Petition for Review

On August 14, 2023, the Third Circuit issued an order dismissing Complainant's petition for review of the ALJ's December 2, 2021 order (denying Complainant's motion to reply to Respondent's reply to his opposition to its motion to dismiss) because Complainant's appeal sought review of an interlocutory order of the ALJ.²⁰ The court noted that even though the ALJ had subsequently dismissed Complainant's complaint in her later January 25, 2022 order, "there is no indication that Petitioner appealed that order to the Administrative Review Board, as required for judicial review."²¹

On October 27, 2023, Complainant requested additional time to request rehearing en banc, which was granted.²² Complainant then filed a request for rehearing en banc on November 16, 2023,²³ which the Third Circuit denied on December 7, 2023.²⁴

F. Congressional and Complainant Inquiries Regarding Petition for Review to the Board

In February and March 2025, the Board received Congressional inquiries requesting the status of an appeal that Complainant stated he had filed with the

¹⁹ *Id.* at 8.

²⁰ *Reid*, No. 22-1166, slip op. at 1.

²¹ *Id.* (citing 29 C.F.R. § 24.110(a), (b)).

²² Request for Additional Time to File for Rehearing at 1, *Reid*, No. 22-1166 (Oct. 27, 2023), Dkt. No. 14-1.

²³ Motion for Rehearing En Banc, *Reid*, No. 22-1166 (Nov. 16, 2023), Dkt. No. 20.

²⁴ Sur Petition for Rehearing at 1, *Reid*, No. 22-1166, (Dec. 7, 2023), Dkt. No. 21. On July 16, 2026, the Third Circuit denied Complainant's June 30, 2026 Motion to Reopen Case for the Limited Purpose of Clarifying the Status of Petitioner's Motion to Stay Administrative Proceedings. Order, *Reid*, No. 22-1166 (July 16, 2026), Dkt. No. 24.

Board.²⁵ On February 20, 2025, the Clerk of the Appellate Boards informed Complainant by email and voicemail that no appeal had been received or was pending with the Board, and that he could fax a petition for review to its office.²⁶ On March 13, 2025, the Board likewise informed Complainant by letter that it had no record of an appeal from the ALJ's January 25, 2022 dismissal order and no pending appeal from Complainant.²⁷ The Board requested a copy of Complainant's petition for review, certificate of service, and proof of filing.²⁸ The Board did not receive those documents from Complainant in 2025 and did not hear from him again for over a year.²⁹

Complainant emailed the Board on March 3, 2026, and requested an update on the status of an appeal that he stated he had filed on January 8, 2024.³⁰ Complainant attached documents to his request showing that he had attempted to electronically file an appeal through the Department of Labor (DOL) electronic filing system on or around December 8, 2023, and that he submitted a query for assistance with filing his appeal online on December 9, 2023.³¹ Complainant received email responses from DOL with the Board's contact information as well as instructions for correcting his incomplete electronic filing on December 11 and 13, 2023, respectively.³² The documentation did not show that Complainant had successfully submitted an appeal through the electronic filing system.³³ The documentation attached to Complainant's March 3, 2026 email to the Board also included a fax confirmation sheet that appeared to indicate that on January 8, 2024, Complainant had transmitted a 183-page petition for review to the Board's fax number.³⁴

²⁵ Notice and Briefing Order at 2.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 2-3.

³¹ *Id.* at 3.

³² *Id.*

³³ *See id.* at 2-3.

³⁴ *Id.* at 3.

G. Appeal Before the Board

In a March 12, 2026 Notice and Briefing Order, the Board accepted Complainant’s appeal under 29 C.F.R. § 24.110(b), but the Board clarified that it did not receive a fax or any petition for review from Complainant before March 3, 2026, and that no appeal was pending before the docketing of Complainant’s Petition for Review on March 11, 2026.³⁵ Both parties filed briefs with the Board.

Complainant insists Respondent is obligated to abide by the 1989 settlement agreement.³⁶ He contends that the 2021 OSHA complaint alleges a “continuous chain” of retaliation by Niagara Mohawk, Constellation, and Exelon dating back to 1988–1989.³⁷ He posits continuing violation principles apply, and that because at least one refusal to hire him falls within the statutory filing period, all claims related to the entire alleged chain of retaliation are also actionable.³⁸ Essentially, Complainant argues that the limitations period for his claims of various adverse actions occurring even before his employment with Niagara Mohawk ended in 2002 and for any refusal-to-hire claim is triggered anew each time he submits a job application or a demand for reinstatement under the 1989 settlement agreement to any company with an ownership interest in Nine Mile Point.³⁹

Complainant argues the ALJ erred in determining his ERA complaint was untimely filed because he demanded that Respondent honor the 1989 settlement agreement on December 15, 2020, and Respondent refused to hire him within the

³⁵ *Id.* at 3-4.

³⁶ Brief of Complainant Seeking Reversal of the ALJ’s Dismissal and Remand for Further Proceedings (Comp. Br.) at 30-32.

³⁷ *Id.* at 5.

³⁸ *Id.* at 17-18.

³⁹ Supplemental Argument in Support of Complainant’s Reply Brief: Newly Identified Documentary Evidence Refuting Respondent’s Untimeliness and Prima Facie Arguments (Comp. Supp. Arg. at 5) (“The Settlement Agreement itself is therefore documentary proof that Complainant engaged in protected ERA activity. Every subsequent denial of reinstatement by every successor employer is a continuation of retaliatory conduct arising from that same protected activity.”).

limitations period.⁴⁰ He asserts that the ALJ erred in determining that he failed to state a refusal-to-hire claim.⁴¹

Respondent counters that the ALJ correctly concluded that the complaint was untimely and failed to state a refusal-to-hire claim.⁴² Respondent also argues that the Board should dismiss Complainant's Petition for Review of the ALJ's Order Dismissing Complaint as untimely.⁴³ Complainant argues that equitable tolling applies to modify the deadline to file his appeal before the Board.⁴⁴

We affirm the ALJ's determination that Complainant's ERA complaint with OSHA was untimely and dismiss the complaint on that basis.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the Board to hear appeals from ALJ decisions and issue agency decisions in cases arising under the ERA.⁴⁵ The Board conducts de novo review of an ALJ's orders on motions to dismiss.⁴⁶

DISCUSSION

Under the ERA, a party alleging discharge or discrimination must file a complaint with OSHA within 180 days of the violation.⁴⁷ The ERA limitations

⁴⁰ *Id.* at 2-3. Complainant also argued that Respondent refused to hire him in 2026 and that his complaint was timely for this reason as well. Comp. Br. at 17.

⁴¹ *Id.* at 19-22.

⁴² Respondent's Opposition to Brief of Complainant Seeking Reversal of the ALJ's Dismissal and Remand for Further Proceedings and Related Motions at 7-11.

⁴³ *Id.* at 5-7.

⁴⁴ Comp. Supp. Arg. at 13-15; Complainant's Reply to Respondent's Argument That the Petition for Review Is Untimely, Request for Equitable Tolling, and Request for Acceptance of Petition Nunc Pro Tunc (Comp. Reply Br.) at 1-7. Complainant's tolling arguments concern only the filing of his Petition for Review with the Board. *See* Comp. Supp. Arg. at 13-15; Comp. Reply Br. at 1-7.

⁴⁵ 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).

⁴⁶ *Yadav v. Frost Bank*, ARB No. 2020-0048, ALJ No. 2020-SOX-00017, slip op. at 3-4 (ARB June 24, 2021) (citation omitted).

⁴⁷ 42 U.S.C. § 5851(b)(1).

period begins “on the date when facts which would support the discrimination complaint were apparent or should have been apparent to a person with a reasonably prudent regard for his rights.”⁴⁸ Similarly, when a complainant alleges refusal to rehire or blacklisting and the employer has not provided direct notice of a decision not to hire, the relevant inquiry is when it became, or should have become, apparent that the employer was refusing to hire the complainant.⁴⁹

We agree with the ALJ’s determination that Complainant’s ERA complaint was untimely filed. As an initial matter, the adverse actions comprising Complainant’s claims of continuous retaliation dating back to the 1980s cannot be actionable via his March 24, 2021 ERA complaint. Unlike acts alleged as part of a hostile work environment claim, refusal to hire, termination, and other adverse actions such as failure to promote are discrete acts that are “not actionable if time barred, even when they are related to acts alleged in timely filed charges. Each discrete discriminatory act starts a new clock for filing charges alleging that act.”⁵⁰

Further, Complainant’s most recent applications for employment with Respondent before filing his March 24, 2021 complaint were submitted more than three years earlier, on February 2, 2018.⁵¹ Complainant has unsuccessfully applied for at least 25 jobs with Respondent from June 2005 to February 2018.⁵² While he may not have received formal rejections of his February 2018 applications, it should have been apparent well before the 180-day period preceding March 24, 2021, that those applications were unsuccessful given Respondent’s extended lack of interest in hiring him.

⁴⁸ *Swenk v. Exelon Generation Co.*, ARB No. 2004-0028, ALJ No. 2003-ERA-00030, slip op. at 4 (ARB Apr. 28, 2005) (citation and internal quotation marks omitted).

⁴⁹ *See Mehrotra v. Gen. Elec. Co.*, ARB No. 2022-0060, ALJ No. 2022-SOX-00014, slip op. at 6-7 (ARB Sept. 21, 2023) (“[W]here no such notice [of the employer’s decision to refuse to hire or blacklist] was given, the appropriate question for when the blacklisting for rehire claim accrues is when it was apparent or should have been apparent that a complainant’s former employer was refusing to rehire them.” (citing *Levi v. Anheuser Busch Cos., Inc.*, ARB Nos. 2006-0102, 2007-0020, 2008-0006, ALJ Nos. 2006-SOX-00037, -00108, 2007-SOX-00055, slip op. at 15 (ARB Apr. 30, 2008))).

⁵⁰ *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002).

⁵¹ Order Dismissing Complaint at 5.

⁵² Comp. Br. at 7-8.

Complainant certainly knew of Respondent’s refusal to hire him when he appealed the U.S. District Court of New Jersey’s dismissal of his claims that Respondent’s failure to hire him was race and age discrimination and retaliation to the Third Circuit on September 10, 2018.⁵³ Complainant cannot restart the limitations period for an ERA refusal-to-hire claim by renewing his decades-old request for reinstatement after long knowing that Respondent would not hire him.⁵⁴

Moreover, the ALJ correctly found that the limitations period for the ERA refusal-to-hire claim did not restart on December 15, 2020.⁵⁵ Complainant wrote to Respondent on December 15, 2020, for help with “workers compensation claims and settlement agreement and employment because [he] did fulfill the requirements of the [1989] agreement” and he was “denied the opportunity to return back” to his position as a Nuclear Auxiliary Operator C or Plant Operator D.⁵⁶ Respondent’s Assistant General Counsel explained in reply that Respondent was not a party to the 1989 Settlement Agreement, the agreement did not apply to Respondent, and that Complainant was not employed by Respondent at the time of his alleged injuries.⁵⁷

We do not construe Complainant’s December 15, 2020 communication as an application for an open position with Respondent. Nor do we construe Respondent’s response as a refusal to hire Complainant for any position for which he had applied; rather, Respondent merely clarified that it was not bound by the 1989 Settlement

⁵³ See Order Dismissing Complaint at 5; Brief on Behalf of Defendant-Appellee Exelon Generation Company, LLC at 4, *Reid v. Exelon Corp.*, No. 18-3008 (3d Cir. Aug. 23, 2019), Dkt. No. 003113329316.

⁵⁴ See *Mehrotra*, ARB No. 2022-0060, slip op. at 7 (“The fact that Mehrotra continued to apply for jobs after realizing that GE had allegedly blacklisted him does not keep his claim alive.”) (citations omitted).

⁵⁵ Order Dismissing Complaint at 5-6. Complainant cites *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973), and *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, (1987), to support his theory that subsequent owners of Nine Mile Point acquired successor liability under the 1989 settlement agreement between Complainant and Niagara Mohawk. Comp. Br. at 30. Those cases are inapposite. They address successor obligations imposed by the National Labor Relations Act, not whether later owners of a facility are bound by a private settlement agreement executed decades earlier by a predecessor owner. *Golden State Bottling*, 414 U.S. at 170-71; *Fall River Dyeing*, 482 U.S. at 29-30.

⁵⁶ Order Dismissing Complaint at 4.

⁵⁷ *Id.*

Agreement.⁵⁸ Accordingly, Respondent's response to Complainant's December 2020 letter did not constitute a refusal to hire, and his March 24, 2021 OSHA complaint was untimely as to all claims.

As we have reached the determination that Complainant's ERA complaint was time-barred, we need not address whether Complainant sufficiently pled a refusal-to-hire claim under the ERA or whether equitable modification principles apply to modify the deadline for Complainant to have filed his Petition for Review with the Board.⁵⁹

CONCLUSION

For the foregoing reasons, we **AFFIRM** the ALJ's findings and conclusions that Complainant's ERA claims are untimely.⁶⁰

⁵⁸ See *Levi v. Anheuser Busch Cos., Inc.*, ARB No. 2008-0086, ALJ No. 2008-SOX-00028, slip op. at 6 (ARB Sept. 25, 2009) (noting a viable refusal-to-hire claim ordinarily involves an application for an open position for which the employer was seeking applicants); see also *Hasan v. U.S. Dep't of Lab.*, 545 F.3d 248, 251 (3d Cir. 2008) (analyzing a refusal-to-hire claim on the premise that open positions existed and that the complainant had applied for those positions).

⁵⁹ We have reached the above determination having considered the record available to the ALJ at the time she rendered her January 25, 2022 Order Dismissing Complaint. Complainant's alleged 2026 applications for employment with Respondent and any other evidence with which he now wishes to supplement the record were not part of the record before the ALJ. We thus deny Complainant's Motion to Supplement the Record with Newly Discovered Evidence. Complainant may file a new OSHA complaint concerning any alleged adverse actions post-dating the ALJ's January 25, 2022 order.

⁶⁰ Complainant submitted documents reflecting that he filed complaints concerning racist conduct by coworkers while employed at Niagara Mohawk and that, as early as March 1, 1990, he requested a transfer to the position he had previously held at Niagara Mohawk. It is not clear why Complainant was not returned to that position. We do not minimize the significance of these experiences, and we recognize that they may have been painful. Nevertheless, because any claims arising from these events are untimely, they fall outside the scope of our review.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

ELLIOT M. KAPLAN
Administrative Appeals Judge