

**U.S. Department of Labor**

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



**IN THE MATTER OF:**

**KEVIN HUFFMAN,**

**ARB CASE NO. 2025-0077**

**COMPLAINANT,**

**ALJ CASE NOS. 2024-FDA-00013  
2025-FDA-00003**

**v.**

**ALJ PAMELA A. KULTGEN**

**SWIFT PREPARED FOODS,**

**DATE: December 18, 2025**

**RESPONDENT.**

**Appearances:**

***For the Complainant:***

**Kevin Huffman; *Pro Se*; Excello, Missouri**

***For the Respondent:***

**Lucas I. Pangle, Esq.; *Wharton, Aldhizer & Weaver, PLC*;  
Harrisonburg, Virginia**

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

## **DECISION AND ORDER DISMISSING APPEAL**

This case arises under the employee protection provisions of the Food Safety and Modernization Act (FSMA), and its applicable implementing regulations.<sup>1</sup> On February 15, 2023, and April 18, 2024, Complainant Kevin Huffman filed complaints against Respondent Swift Prepared Foods with the United States Department of Labor's Occupational Safety and Health Administration (OSHA), alleging that Respondent violated the FSMA by retaliating against him for raising

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<sup>1</sup> 21 U.S.C. § 399d; 29 C.F.R. Part 1987 (2025).

safety and health complaints. OSHA dismissed both complaints, and Complainant requested a hearing before an Administrative Law Judge (ALJ).

On April 7, 2025, Respondent filed a Motion for Summary Decision with the ALJ. Complainant did not file a brief in response to the Motion for Summary Decision. Instead, he “sent innumerable emails” to the ALJ’s prior and current attorney advisor, to the District Chief Judge, and to the District’s main email box.<sup>2</sup> The ALJ determined the emails “contained no discernible response to the arguments contained in Respondent’s Motion for Summary Decision.”<sup>3</sup>

On July 14, 2025, the ALJ issued a D. & O. granting the Motion for Summary Decision and dismissing Complainant’s complaint. The ALJ determined that although there was little doubt, for purposes of summary decision, that Complainant engaged in protected activity under the FSMA by raising safety and health complaints, Complainant failed to proffer proof that he suffered an unfavorable or adverse personnel action.<sup>4</sup> To the contrary, the evidence showed that Complainant continued to be employed with Respondent, remained a member of Respondent’s safety committee, received raises throughout his employment, was subjected to no demotion, was the subject of only one disciplinary action that was unrelated to his health and safety complaints, and applied for and was awarded a new position, which came with a wage increase.<sup>5</sup> Thus, Complainant could not create a genuine issue of material fact to survive summary decision.

On August 4, 2025, Complainant filed a single-page, handwritten Petition for Review with the Administrative Review Board (Board). In the Petition for Review, Complainant did not address the ALJ’s determination that he did not produce evidence that he suffered an unfavorable personnel action. Instead, Complainant vaguely alleged that he “object[ed] to all findings based on fraud,” that “[t]his Judge and her boss have allowed changed or altered documents into the court record,” that OSHA did not collect certain information he asked OSHA to collect, that the threats against him were captured on video, that he did not receive certain discovery from

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<sup>2</sup> July 14, 2025 Decision and Order Granting Respondent’s Motion for Summary Decision (D. & O.) at 4. The ALJ also noted that Complainant did not comply with the ALJ’s requests to schedule a status conference, at which the ALJ would ensure that Complainant understood the issues before him and the discovery process. *Id.* at 6 n.4.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.* at 7-8.

<sup>5</sup> *Id.* at 9.

the attorney for Respondent's parent company, JBS, and that "THIS WAS AND IS FRAUD PAY TO PLAY DEPARTMENT OF LABOR." Complainant did not offer or cite any evidence in support of any of the allegations made in his Petition for Review.

On August 12, 2025, the Board issued a Notice of Appeal Acceptance and Briefing Order (Briefing Order). Under the terms of the Briefing Order, Complainant was ordered to file an Opening Brief within twenty-eight (28) days of the date of issuance of the Board's Briefing Order, i.e., on or before September 9, 2025. The Board provided specific instructions regarding the form of the brief, including that it must be in 12-point, 10 character-per-inch type or larger font, that it must be double spaced, that it must have a minimum of one-inch margins, and that it must be printable on 8.5- by 11-inch paper.<sup>6</sup> The Board also specified how Complainant was required to submit his Opening Brief. Specifically, the Board encouraged Complainant to file using the Board's Electronic Filing and Service (EFS) System. Otherwise, Complainant was instructed that he "must file all pleadings, including briefs, appendices, motions, and other supporting documentation, by mail or by personal or commercial delivery. Email filings will *not* be accepted, absent extraordinary circumstances."<sup>7</sup>

United States Postal Service tracking information shows that the Briefing Order sent to Complainant was picked up at a postal facility on August 19, 2025. The Board also sent a courtesy copy of the Briefing Order to Complainant via email and reminded the parties that they could only file with the Board using the EFS System, by mail, or by personal or commercial delivery, and that email filings would not be accepted, absent extraordinary circumstances.

Complainant did not file an Opening Brief. On September 22, 2025, Respondent filed a Response Brief, noting that Complainant had failed to file an Opening Brief and responding to Complainant's Petition for Review. Respondent argued that Complainant failed to challenge or controvert the ALJ's conclusion that Complainant failed to produce evidence that he suffered an adverse personnel action, and that his allegation of unspecified "fraud" was meritless.

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<sup>6</sup> Briefing order at 8.

<sup>7</sup> *Id.* at 2 (emphasis original).

Consistent with his approach before the ALJ, rather than respond in a written brief, Complainant instead sent 24 emails to the ARB between September 22, 2025, and October 7, 2025, none of which appear to copy Respondent's counsel. The emails cover a range of subjects and make numerous accusations—for example, some suggest Complainant believes he has not received certain evidence to which he believes he is entitled; some criticize OSHA's investigation of his complaint and accuse it of wrongdoing; some allege documents or evidence were "changed and altered" by Respondent; one alleges "fraud" carried out by the Board's "bosses and region 7 officers" who either "change[d]/alter[ed] the documents" or "covered-up videos;" some forward emails Complainant sent to JBS, Respondent's parent company, which appear to be related to Complainant's safety and health concerns, accuse JBS and/or Respondent of backdating and falsifying safety documentation, and assert that OSHA does not care about safety as part of a "conspiracy;" some forward United States Postal Service (USPS) tracking information for materials mailed to or from Complainant and assert that materials sent to him by the Board would be "returned . . . for [evidentiary] purposes;" one relates to a Freedom of Information Act Request Complainant submitted to the Department of Labor; some suggest OSHA was engaged in "fraud" because it emailed him a document with his incorrect mailing address listed, and did not send it separately via U.S. mail; one relates to an apparent complaint Complainant filed with the Department's Office of the Inspector General (OIG), in which OIG "determined and recommend that the concerns you reported would be more appropriately addressed by the Federal Bureau of Investigation (FBI)," and suggested he contact the FBI instead; and some accuse the Department of Labor of being involved in a "pay to play scheme."

Complainant also explicitly stated in some of the emails that he did not intend to participate in these proceedings unless the FBI became involved. In a September 22, 2025 email, he stated: "I again state as in the mail re-mailed to this office unless the FBI is involved I will submit no more documents As I believe I can prove this is a pay to play scheme with the help of the department of labor and it's officers." In another email on September 22, 2025, he likewise stated: "UNLESS THE FBI WILL SPEAK TO ME REGARDING THE PRIOR ILLEGAL ACTS CARRIED OUT BY JUDGES AND ATTORNIES I WILL NOT RESPOND ANY FURTHER AS I BELIEVE IN GOOD FAITH THIS IS A PAY TO PLAY SCHEME."<sup>8</sup>

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<sup>8</sup> This email responded directly to the Board's August 26, 2025 email sending the Briefing Order to the parties.

On November 20, 2025, the Board issued an Order to Show Cause to Complainant. The Board stated Complainant's emails did not comply with the Briefing Order, did not constitute an Opening Brief, and would not be considered in this appeal. The Board warned Complainant that it has the authority to issue sanctions, including dismissal, for a party's failure to comply with the Board's orders and briefing requirements.<sup>9</sup> Accordingly, the Board ordered Complainant to file a written brief by December 4, 2025, explaining why the Board should not dismiss his appeal for failing to file an Opening Brief as ordered. The Board also ordered Complainant to file his Opening Brief with his response. The Board stated that Complainant's Opening Brief must comply with the Board's Briefing Order and warned that if the Board did not receive Complainant's response to the Order to Show Cause and the Opening Brief by December 4, 2025, the Board may dismiss the appeal without further notice to the parties. The Board served the Order to Show Cause to Complainant via certified mail and also sent him a courtesy copy by email.

Once again, rather than file a written brief as ordered, Complainant sent another eight emails to the Board, without appearing to copy Respondent's counsel. Most of the emails related to or forwarded USPS tracking information regarding the copy of the Order to Show Cause sent to Complainant by the Board. The final email, sent on December 9, 2025, stated that Complainant was returning the Board's Order to Show Cause unopened and reiterated that Complainant believed there was a "pay to play" scheme at the Department of Labor,<sup>10</sup> that evidence had been destroyed, altered, or covered up, and that he "OBJECT[S] TO THIS LETTER AND RETURN IT BASED ON THE ABOVE FACTS AND A FEW OTHERS."

The Board has the inherent "power to dismiss a case for failure to prosecute in an effort to control its docket and to promote the efficient disposition of its

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<sup>9</sup> *Knibb v. N.J. Transit Rail Ops., Inc.*, ARB No. 2023-0011, ALJ No. 2020-FRS-00078, slip op. at 4 (ARB Feb. 3, 2023) (citation omitted).

<sup>10</sup> While this email is almost entirely devoid of supporting details, Complainant alleged that JBS gave "Trump 5 million dollars for his election," that the federal government then purchased foods from the parent company "for feeding the detainees that are rounded up," and that "Trump cuts the NLRB staff an independent office so, dirty department of labor judges' and officials can rig and cover up any cases that show what is really occurring." Complainant does not offer any evidence in support of these allegations or explain why or how he thinks this relates back to his case, specifically.

cases.”<sup>11</sup> Pursuant to this authority, the Board “may dismiss a complaint in a case in which the complainant failed to comply with the Board’s orders.”<sup>12</sup>

In this case, the Board has twice instructed Complainant to file an Opening Brief and warned Complainant that failing to file an Opening Brief could result in dismissal of his appeal. Nevertheless, Complainant failed to file an Opening Brief. In fact, he explicitly stated that he did not intend to participate in these proceedings without the involvement of the FBI<sup>13</sup> and returned the Order to Show Cause to the Board unopened.

Complainant’s myriad emails do not comply with the Briefing Order and do not constitute an Opening Brief. The Board told Complainant the formatting requirements for the Opening Brief and how the Brief was to be submitted, including clearly that he “must file all pleadings, including briefs, appendices, motions, and other supporting documentation, by mail or by personal or commercial delivery. Email filings will *not* be accepted, absent extraordinary circumstances.”<sup>14</sup> While we are mindful of Complainant’s pro se status, and while we typically give certain latitude to pro se litigants, Complainant’s repeated failure to comply with the Board’s Orders, coupled with his expressed intention *not* to participate in this appeal and comply with the Board’s orders, compels the Board to dismiss his appeal.<sup>15</sup>

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<sup>11</sup> *Gonzales v. Global Crossing Airlines*, ARB No. 2025-0040, ALJ No. 2024-AIR-00029, slip op. at 2 (ARB May 16, 2025) (citation omitted) (dismissing appeal where complainant failed to file opening brief or respond to order to show cause).

<sup>12</sup> *Id.* (citation omitted).

<sup>13</sup> The Board has no authority to involve the FBI in these proceedings.

<sup>14</sup> Briefing Order at 2 (emphasis original). Complainant has never claimed that “extraordinary circumstances” prevented him from filing a brief by appropriate means.

<sup>15</sup> *See Phox v. The Savoy at 21C*, ARB No. 2021-0057, ALJ No. 2019-FDA-00014, slip op. at 3 n.9 (ARB Jan. 6, 2022) (“While the Board does provide a degree of latitude to pro se complainants, we also must be able to impose appropriate sanctions when they fail to comply with the procedures in the administrative process, for a pro se party may not be allowed to avoid the risks of failure that attend his decision to forgo expert assistance.” (internal quotations and citations omitted)); *Jeanty v. Lily Transp. Co.*, ARB No. 2019-0005, ALJ No. 2018-STA-00013, slip op. at 12 (ARB May 13, 2020) (“Although Jeanty is afforded certain latitudes as a self-represented litigant, Jeanty is not excused from the rules of practice and procedure applicable to this proceeding merely because of his pro se status.” (citations omitted)).

Furthermore, even if we construed Complainant’s emails, either individually or collectively, as an “Opening Brief,” we would still dismiss his appeal. The ALJ dismissed Complainant’s complaint because he failed to produce evidence that he suffered an unfavorable or adverse personnel action. Complainant made no effort to address the ALJ’s conclusion in his Petition for Review or any of his emails. Despite Complainant’s pro se status, he had the obligation to identify ALJ holdings for this Board to review and identify specific objections to the ALJ’s conclusions. Having failed to do so, any argument that the ALJ erred in concluding that Complainant failed to proffer evidence of an adverse or unfavorable personnel action—an essential element of his claim<sup>16</sup>—is waived.<sup>17</sup>

For similar reasons, we also reject Complainant’s various collateral attacks on the D. & O. and the administrative process as a whole—for example, that there was some “fraud” at play here, that a “pay to play scheme” is involved, that OSHA, the ALJ, or the Department of Labor are part of a conspiracy or engaged in some other wrongdoing against Complainant, and that evidence was not produced, altered, or destroyed, among others. Each of Complainant’s allegations are vague and conclusory, and he failed to point to any record evidence to support or substantiate any of these serious accusations. Once again, while we are mindful of Complainant’s pro se status, he must still make cognizable legal arguments and support them with citations to material from the record.<sup>18</sup> Because he failed to do so, we must reject his arguments.

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<sup>16</sup> 21 U.S.C. § 399d(a); 29 C.F.R. §§ 1987.102(a), .109(a).

<sup>17</sup> 29 C.F.R. § 1987.110(a) (“The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived.”); *see also Salyer v. Sunstar Eng’g*, ARB No. 2014-0055, ALJ No. 2012-STA-00023, slip op. at 2-3 (ARB Sept. 29, 2015) (dismissing pro se appeal where complainant did “not substantively challenge or mention the ALJ’s holdings . . . let alone make any allegation that the ALJ erred in finding no causal connection between his protected activity and the extension.”).

<sup>18</sup> *See Laquey v. UnitedHealth Grp., Inc.*, ARB No. 2017-0060, ALJ No. 2016-SOX-00002, slip op. at 13-14 (ARB Oct. 9, 2020) (“While we are aware that pro se litigants are entitled to some leeway, they are still required to make legal arguments and support those arguments with material from the record.”) (citations omitted); *Hasan v. Sargent & Lundy*, ARB No. 2005-0099, ALJ No. 2002-ERA-00032, slip op. at 8-9 (ARB Aug. 31, 2007) (“Despite the fact that *pro se* filings are construed liberally, the Board must be able to discern cogent arguments in any appellate brief, even one from a *pro se* litigant. For us to consider an argument, a party must develop the argument with citation to authority. Where, as here, a party fails to develop the factual basis of a claim on appeal and, instead,

Accordingly, Complainant's Petition for Review is **DISMISSED**.

**SO ORDERED.**

**RANDEL K. JOHNSON**  
**Chief Administrative Appeals Judge**

**THOMAS H. BURRELL**  
**Administrative Appeals Judge**

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merely draws and relies upon bare conclusions, the argument is deemed waived") (citations omitted).