



**IN THE MATTER OF:**

**MARCUS SHEFFIELD,**

**ARB CASE NO. 2026-0010**

**COMPLAINANT,**

**ALJ CASE NO. 2025-FDA-00018**

**ALJ DANA ROSEN**

**v.**

**DATE: March 11, 2026**

**TYSON FOODS, INC.,**

**RESPONDENT.**

**Appearances:**

***For the Complainant:***

**Marcus Sheffield; *Pro Se*; Seguin, Texas**

***For the Respondent:***

**James L. Curtis, Esq., Mark A. Lies, Esq., and Melissa A. Ortega,  
Esq.; *Seyfarth Shaw LLP*; Chicago, Illinois**

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

**DECISION AND ORDER**

This case arises from a complaint filed by Complainant Marcus Sheffield against Respondent Tyson Foods, Inc., alleging retaliation in violation of the employee protection provisions of the Food Safety Modernization Act (FSMA) and its implementing regulations.<sup>1</sup> Upon the denial of the complaint by the Department of Labor's Occupational Safety and Health Administration (OSHA), Complainant requested a hearing before an Administrative Law Judge (ALJ). The ALJ dismissed Complainant's complaint with prejudice on the basis that Complainant had removed his complaint to the United States District Court for the Western District

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

of Texas. Complainant is self-represented. He filed a Petition for Review with the Administrative Review Board (the Board). For the reasons below, we **AFFIRM** the ALJ's dismissal of Complainant's case.

### BACKGROUND

Complainant filed a complaint with OSHA on January 14, 2025, alleging Respondent violated the FSMA and Section 11(c) of the OSH Act (29 U.S.C. § 660) by discharging him in retaliation for his complaints to management, including complaints of “unsanitary conditions of the preparation area, improper personal protective equipment, and the Feed Mill Department was out of compliance.”<sup>2</sup> OSHA denied the complaint on May 14, 2025, having found no reasonable cause to believe Respondent violated the FSMA and the OSH Act.<sup>3</sup> Complainant filed objections and requested a hearing before an ALJ on June 13, 2025.<sup>4</sup>

Complainant filed a motion to remand to OSHA to investigate his claims anew on the basis OSHA failed to develop the record, ignored critical evidence, and was biased and “fraudulent.”<sup>5</sup> In his motion, Complainant argued a de novo hearing would not cure OSHA's failures.<sup>6</sup> Respondent opposed the motion.<sup>7</sup> The ALJ noted that she did “not have jurisdiction to order OSHA to investigate,” but granted Complainant's motion on November 21, 2025, “so that he [could] contact OSHA and pursue additional investigation.”<sup>8</sup>

On December 3, 2025, Respondent requested that the ALJ dismiss Complainant's appeal with prejudice because Complainant filed an original action in the United States District Court for the Western District of Texas on November 7, 2025.<sup>9</sup> Respondent asserted that the complaint associated with that action included the same claims of retaliation under the FSMA to be adjudicated by the ALJ and attached a copy of the complaint to its filing.<sup>10</sup>

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<sup>2</sup> May 14, 2025 OSHA Determination Letter at 1.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> Notice of Objection and Request for Hearing.

<sup>5</sup> Order Granting Complainant's Motion to Remand at 1 (ALJ Order of Remand).

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Respondent's Notice of Complainant's District Court Filing.

<sup>10</sup> *Id.*

The ALJ granted Respondent’s request for dismissal on December 4, 2025, and issued an Order Dismissing with Prejudice as Complainant Has Removed to Federal Court (Order of Dismissal). The ALJ concluded that the OALJ “no longer has jurisdiction based on Complainant removing his complaint to the U.S. District Court” and that “there are no remaining issues requiring resolution” before the OALJ.<sup>11</sup> Complainant objected to the ALJ’s dismissal that same day. The ALJ treated the objections as a request for reconsideration, which the ALJ denied in a December 10, 2025 Order Noting and Overruling Complainant’s Objections to His Remove to Federal Court and Order Denying Motion for Reconsideration (Order Denying Reconsideration).<sup>12</sup>

Complainant filed a Petition for Review with the Board. On appeal, he argues the ALJ’s December 4, 2025 Order of Dismissal was an abuse of the ALJ’s discretion and misapplied the kick out provision at 21 U.S.C. § 399d(b)(4).<sup>13</sup> Complainant also contends that the November 21, 2025 ALJ Order of Remand denied him due process and was “toothless” because it did not contain specific instructions to OSHA to investigate his claims further.<sup>14</sup> Respondent argues the ALJ properly remanded Complainant’s claim under 29 C.F.R. § 1987.109(c)<sup>15</sup> and properly dismissed it for lack of jurisdiction as a result of his U.S. District Court filing pursuant to 29 C.F.R. § 1987.114.<sup>16</sup>

### **JURISDICTION AND STANDARD OF REVIEW**

The Secretary of Labor has delegated authority to the ARB to hear appeals from ALJ decisions and issue agency decisions in cases arising under the FSMA.<sup>17</sup> We review the ALJ’s dismissal order de novo.<sup>18</sup>

### **DISCUSSION**

The FSMA contains a “kick out” or “removal” provision stating that “[i]f the Secretary [of Labor] has not issued a final decision within 210 days after the filing

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<sup>11</sup> Order of Dismissal at 2.

<sup>12</sup> Order Denying Reconsideration at 2.

<sup>13</sup> Complainant’s Opening Brief at 4-5.

<sup>14</sup> *Id.* at 2-4.

<sup>15</sup> Respondent’s Response Brief at 9-10.

<sup>16</sup> *Id.* at 10-12.

<sup>17</sup> 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).

<sup>18</sup> *Gladden v. Proctor & Gamble Co.*, ARB No. 2022-0012, ALJ No. 2021-SOX-00012, slip op. at 9 (ARB May 9, 2023) (citations omitted).

of the complaint . . . the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action . . . .”<sup>19</sup>

As of the date of Complainant’s filing of the action in federal district court, sufficient time had elapsed to allow Complainant to remove his FSMA discrimination claim from review by the OALJ to the district court. Complainant filed his complaint with OSHA on January 14, 2025.<sup>20</sup> The kick out provision became ripe in relation to the OSHA complaint 210 days later, or August 12, 2025.<sup>21</sup> Complainant filed his complaint with the United States District Court of the Western District of Texas on November 7, 2025.<sup>22</sup>

Further, appropriate application of the above kick out provision depends on whether Complainant asserted claims and sought remedies under the employee protection provisions of the FSMA when he filed his complaint in the federal district court.<sup>23</sup> We conclude that Complainant did so.

With respect to Complainant’s claims, Count II of Plaintiff’s Original Complaint and Demand for Jury Trial filed with the United States District Court for the Western District of Texas is entitled “Retaliation: (ADA, OSH ACT, FSMA WHISTLEBLOWER).”<sup>24</sup> Count II states, in part: “Defendant retaliated against Plaintiff by terminating him because he engaged in multiple protected activities, including . . . making good-faith reports of serious OSH Act and FSMA compliance violations to management and HR” and “Defendant’s stated reason for termination is a false pretext for unlawful termination.”<sup>25</sup>

Count II refers to previously stated factual assertions in the district court complaint, which include that “Plaintiff engaged in extensive protected activity by repeatedly exposing and attempting to enforce critical violations of federal law and company policy, including: . . . Reporting systemic Food Safety Modernization Act

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<sup>19</sup> 21 U.S.C. § 399d(b)(4)(A); 29 C.F.R. § 1987.114(a) (“The complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action . . . .”).

<sup>20</sup> May 14, 2025 OSHA Determination Letter at 1.

<sup>21</sup> 21 U.S.C. § 399d(b)(4)(A).

<sup>22</sup> District Court Complaint (Dist. Ct. Compl.).

<sup>23</sup> *See Carmack v. Nat’l R.R. Passenger Corp.*, ARB No. 2024-0052, ALJ No. 2024-FRS-00014, slip op. at 7 (ARB July 10, 2025).

<sup>24</sup> Dist. Ct. Compl. at 4.

<sup>25</sup> *Id.*

(FSMA) violations, including poor housekeeping, accumulation of ingredients near truck pits, and risks of cross-contamination.”<sup>26</sup>

These claims of protected activity in Complainant’s federal district court complaint correspond to his OSHA complaint allegations that he was terminated in retaliation for activity encompassing “unsanitary conditions of the preparation area, improper personal protective equipment, and the Feed Mill Department was out of compliance.”<sup>27</sup>

By way of remedies, Complainant seeks compensatory damages, including “lost wages, back pay, lost benefits, medical expenses, and general damages for pain, suffering, and emotional distress” and equitable relief of “reinstatement to his former position or front pay in lieu of reinstatement.”<sup>28</sup> Given that these claims and remedies fall squarely within the realm of the employee protection provisions of the FSMA and are clearly presented as such by Complainant in his district court complaint, the statute’s kick out provision applied. Accordingly, we conclude that the ALJ correctly dismissed Complainant’s complaint for lack of jurisdiction in this matter.

It is therefore unnecessary for the Board to address Complainant’s remaining arguments or his Third Motion for Leave to File New Evidence, filed with the Board on February 23, 2026.

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<sup>26</sup> *Id.* at 3.

<sup>27</sup> May 14, 2025 OSHA Determination Letter at 1.

<sup>28</sup> Dist. Ct. Compl. at 5.

**CONCLUSION**

For the foregoing reasons, we **AFFIRM** the ALJ's dismissal order and **DISMISS** Complainant's appeal.

**SO ORDERED.**

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

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

**PHILIP G. KIKO**  
**Administrative Appeals Judge**