



IN THE MATTER OF:

SHIVA SHANKER PANDIRI,

ARB CASE NO. 2026-0003

COMPLAINANT,

ALJ CASE NO. 2024-LCA-00011

ALJ EVAN H. NORDBY

v.

DATE: August 7, 2026

BYTEDANCE INC.,

RESPONDENT.

Appearances:

For the Complainant:

Shiva Shanker Pandiri; *Pro Se*; Santa Clara, California

For the Respondent:

Kenneth Edward Raleigh, Esq., Natalie Pate, Esq., and Edward Hutschenreuter, Esq.; *Fragomen, Del Rey, Bernsen & Loewy, LLP*; Washington, DC

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

DECISION AND ORDER

This case arises under the Immigration and Nationality Act (INA) and implementing regulations, as related to the H-1B nonimmigrant work visa program.¹ On June 17, 2024, Complainant Shiva Shanker Pandiri filed a motion to voluntarily withdraw his claim against Respondent ByteDance Inc. pending before a United States Department of Labor Administrative Law Judge (ALJ) which the ALJ granted on June 18, 2024. On July 10, 2024, Complainant filed a Motion for Reconsideration which the ALJ denied. On November 21, 2025, more than sixteen

¹ 8 U.S.C. §§ 1101(a)(15)(H)(i)(b); 20 C.F.R. Part 655, Subparts H and I (2026).

months later, Complainant sought review by the Administrative Review Board (Board or ARB). For the reasons set forth below, we affirm the ALJ’s dismissal of this case.

BACKGROUND

Complainant, a then-H-1B visa holder, filed a complaint with the U.S. Department of Labor’s Wage and Hour Division (WHD) against his employer, ByteDance Inc. His complaint alleged damages totaling \$746,656 resulting from (1) stock benefits not received and (2) discrepancies between the compensation he received and what was due to him under the Labor Condition Application (LCA)² for hours worked from September 2021 to June 2023.³ Complainant claims he would not have resigned from his position with Respondent “if I was given explanation of how wage rate was determined and if I was paid and offered the fringe benefits equally”⁴ On March 15, 2024, after an investigation, WHD denied Complainant’s claim, stating that it determined that Respondent “committed no violation.”⁵

On March 29, 2024, Complainant timely appealed the WHD’s determination to the Office of Administrative Law Judges (OALJ) and requested a hearing. After initial discovery disclosures and a continuance, the ALJ set a discovery deadline for July 3, 2024. On June 17, 2024, Complainant filed a Motion to Dismiss, asking to voluntarily withdraw his complaint. Respondent did not oppose, and the ALJ granted the Motion to Dismiss the following day, June 18, 2024.

On July 10, 2024, Complainant filed a Motion for Reconsideration (First Motion for Reconsideration), stating, “I request the Office of Administrative Law Judges to reopen my case and allow me to proceed from outside the United States electronically with the amendments to the complaint.”⁶ Respondent opposed

² 8 U.S.C. § 1182 (n)(1)(A)(i)(II) (“No alien may be admitted or provided status as an H-1B nonimmigrant in an occupational classification unless the employer . . . is offering and will offer during the period of authorized employment . . . the prevailing wage level for the occupational classification in the area of employment . . . based on the best information available as of the time of filing the application . . .”).

³ Complainant’s Disclosures at 3.

⁴ *Id.*

⁵ Determination Letter, Case #1987898, Wage and Hour Div. (Mar. 15, 2024) at 1.

⁶ First Motion for Reconsideration at 1.

Complainant's request, and the ALJ issued an Order Denying Motion for Reconsideration on July 23, 2024. The ALJ determined that the Motion for Reconsideration was not timely filed because, under the OALJ Rules of Practice and Procedure, "[m]otions to reconsider a decision must be filed within ten days of service of the decision."⁷

On July 28, 2024, five days after the ALJ's denial, Complainant filed a Reply to Respondent's [O]pposition to Motion for Reconsideration and [R]equest to [R]econsider the [D]enial and [M]odify [P]revious [O]rders (Second Motion for Reconsideration). In that filing, Complainant stated his desire to refile his claim "later with better preparation with OALJ or in other forums where I can pursue my claims to the full extent."⁸

He went on to restate his prior allegations against Respondent and make new ones, including fraudulent and deceptive employment and business practices, claims of a hostile work environment, and affiliation with the Chinese Communist Party.⁹ The ALJ did not rule on Complainant's second motion for reconsideration.

More than a year later, on September 30, 2025, Complainant submitted a Request for Modification and Equitable Tolling (Third Motion for Reconsideration). The ALJ did not rule on Complainant's third motion for reconsideration, and Complainant states that it was rejected from the docket "on the basis that the case was closed."¹⁰

On November 21, 2025, 521 days after the ALJ issued the Order of Dismissal, Complainant filed a Notice of Appeal with Request for Remand and Equitable Tolling (Petition for Review) with the Board. In it, Complainant states that to pursue his H-1B claim, he applied for two extensions to remain in the United States.¹¹ Complainant states further that he decided to leave the United States while he was waiting for his H-1B claim to arrive on the docket and that, when he

⁷ Order Denying Motion for Reconsideration at 1 (citing 29 C.F.R. § 18.93). Under the applicable rule, Complainant's Motion for Reconsideration needed to be filed on or before June 28, 2024.

⁸ Second Motion for Reconsideration at 3.

⁹ *Id.* at 5-6.

¹⁰ Opening Brief of Petitioner (Comp. Br.) at 4.

¹¹ Petition for Review at 8.

voluntarily dismissed his case with the ALJ, his concurrent complaints with the Equal Employment Opportunity Commission (EEOC) and the Department of Justice (DOJ) were still under investigation.¹² He claims he received rights to sue as of November 2024 and withdrew his complaint from the OALJ in order to pursue his claims fully in other forums. Once he realized that he needed to file his EEOC or DOJ lawsuit in person and that the OALJ is the proper forum to pursue his H-1B claims, he filed his first motion for reconsideration, which the ALJ denied.¹³

On appeal, Complainant argues that finality does not attach to the ALJ's Order of Dismissal because the ALJ did not rule on his Second and Third Motions for Reconsideration. He argues further that equitable tolling and equitable estoppel apply because "agency inaction and concealment prevented timely resolution despite Complainant's diligence."¹⁴

The dispositive issues before the Board in this case are (1) the timeliness of Complainant's appeal and whether successive Motions for Reconsideration before the ALJ extend the time for a complainant to file an appeal with the Board; (2) whether equitable tolling should apply; and (3) whether equitable estoppel is warranted.

JURISDICTION AND STANDARD OF REVIEW

The Board has jurisdiction to review the ALJ's decision pursuant to 20 C.F.R. § 655.845.¹⁵ Under the Administrative Procedure Act, the Board, as the Secretary of Labor's designee, acts with "all the powers [the Secretary] would have in making the initial decision"¹⁶ The Board therefore has plenary power to review an ALJ's factual and legal conclusions de novo.¹⁷

¹² *Id.* at 5-6.

¹³ *Id.* at 6.

¹⁴ Comp. Br. at 2.

¹⁵ Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)), 85 Fed. Reg. 13186 (Mar. 6, 2020).

¹⁶ 5 U.S.C. § 557(b); *Adm'r, Wage & Hour Div., U.S. Dep't of Lab. v. Macks USA, Inc.*, ARB No. 2022-0038, ALJ No. 2017-LCA-00013, slip op. at 7-8 (ARB Feb. 21, 2023) (citation omitted).

¹⁷ *Macks USA, Inc.*, ARB No. 2022-0038, slip op. at 8 (citing *Mehra v. W. Va. Univ.*, ARB No. 2021-0056, ALJ No. 2017-LCA-00002, slip op. at 4 (ARB Dec. 21, 2021)).

DISCUSSION

1. Timeliness of Complainant's Petition for Review

Once the ALJ issued the Order of Dismissal on June 18, 2024, Complainant had 30 days to file an appeal with the Board.¹⁸ This put the appeal deadline on July 18, 2024. Here, however, we have a motion for reconsideration and an order denying that motion. In *Phox v. The Savoy at 21C*, the Board held that a timely motion for reconsideration following an ALJ's decision and order extends the deadline for filing an appeal with the Board until the ALJ rules on the motion.¹⁹ However, an untimely motion for reconsideration does not extend the appeal deadline.²⁰

Complainant's motion for reconsideration was untimely. Pursuant to the OALJ Rules of Practice and Procedure, Complainant had ten days from the date the ALJ issued his Order of Dismissal in which to file a motion for reconsideration.²¹ Thus, to be timely, Complainant had to file a motion for reconsideration by June 28, 2024. On July 10, 2024, twelve days after the expiration of the time in which he could timely seek reconsideration, Complainant filed the First Motion for Reconsideration, which the ALJ denied on July 23, 2024, citing untimeliness.²²

Because Complainant's First Motion for Reconsideration was untimely, it did not affect the deadline to seek review of the ALJ's decision by the Board. To be clear, if Complainant had timely filed his Motion for Reconsideration, the deadline for filing his Petition for Review would have been *reset* to thirty days from the date

¹⁸ 20 C.F.R. § 655.845(a) ("To be effective, such petition shall be received by the Board within 30 calendar days of the date of the decision and order.").

¹⁹ *Phox v. The Savoy at 21C*, ARB No. 2021-0057, ALJ No. 2019-FDA-00014, slip op. at 2-3 (ARB Jan. 6, 2022).

²⁰ *Id.* at 3.

²¹ 29 C.F.R. § 18.93 ("A motion for reconsideration of a decision and order must be filed no later than 10 days after service of the decision on the moving party.").

²² Order Denying Motion for Reconsideration at 1.

the ALJ issued the Order Denying Motion for Reconsideration.²³ As the Supreme Court set forth in *Arellano v. McDonough*, this is distinct from “tolling,” which “effectively extends an otherwise discrete limitations period set by Congress.”²⁴

Here, Complainant did not file the Petition for Review until November 21, 2025, more than 500 days after the Order Denying Motion for Reconsideration and more than 520 days after the ALJ’s Order of Dismissal. Thus, Complainant’s appeal was untimely.

Complainant argues that his Petition for Review was not untimely because the time in which to seek review would only run from the date on which the ALJ issued an order disposing of his Second Motion for Reconsideration, which the ALJ did not rule on.²⁵ For the following reasons, this argument is without merit.

The Seventh Circuit Court of Appeals addressed this issue in *Saban v. U.S. Department of Labor*. In *Saban*, the Seventh Circuit held “there is no doubt that a second or successive motion to reconsider does not toll the deadline for filing the petition for judicial review because otherwise a petitioner could, at will, postpone the deadline for that filing indefinitely.”²⁶ The court explained, “[t]he time limit [for taking appeals] would be a joke if parties could continually file new motions, preventing the judgment from becoming final.”²⁷

²³ Although the term “tolling” is sometimes used to describe the effect that a timely filed motion for reconsideration has on the time in which to file an appeal, this is something of a misnomer. A more precise statement is that the time in which an appeal may be filed only begins to run on the date on which the ALJ rules upon the timely filed motion for reconsideration. *Cf.* FED. R. APP. P. 4(A) (“If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion [.]”).

²⁴ *Arellano v. McDonough*, 598 U.S. 1, 6 (2023) (quoting *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014)).

²⁵ See Reply Br. at 6 (“Where reconsideration submissions are accepted, briefed, and opposed but never adjudicated, finality does not attach, and appeal deadlines do not run.”). Had the ALJ responded to the subsequent motions for reconsideration, it might have reduced confusion, but the ALJ’s omission does not change the legal analysis.

²⁶ *Saban v. U.S. Dep’t. of Lab.*, 509 F.3d 376, 379 (7th Cir. 2007).

²⁷ *Id.* (quoting *Charles v. Daley*, 799 F.2d 343, 347 (7th Cir. 1986)).

Other federal appellate courts have reached the same conclusion. In one decision, the Tenth Circuit held that “a second and successive motion to reconsider does not again toll the deadline to seek judicial review of the Board’s order of dismissal or denial of the first motion to reconsider.”²⁸ In another case, the Fifth Circuit stated, “[t]his court has previously held that successive motions under Federal Rule of Civil Procedure 59(e) for reconsideration or rehearing generally do not toll the appeals period”²⁹

The Board has previously adopted the principles employed by federal courts with regard to the effect of a motion for reconsideration on the time in which a party may seek review of an ALJ’s decision.³⁰ We see no reason here to diverge from the view taken by the Courts for the Seventh, Tenth, and Fifth Circuits that successive motions for reconsideration have no effect on the time in which to seek review of an ALJ’s decision.

Accordingly, Complainant’s Petition for Review, filed on November 21, 2025, was untimely, and the subsequent motions for reconsideration did not extend the deadline.

2. Equitable Tolling

Although his appeal was untimely, Complainant argues that his deadline to appeal should be equitably tolled. The Board has recognized that the time to file an appeal with the Board is not jurisdictional and, therefore, is subject to equitable modification, including equitable tolling.³¹

²⁸ *Smith v. U.S. Dep’t of Lab.*, 775 F. App’x 950, 952 (10th Cir. 2019) (holding that a driver’s second and successive motion for reconsideration did not extend time period for seeking judicial review with respect to the Board’s initial dismissal order and its denial of trucker’s first motion for reconsideration).

²⁹ *In re Stangel*, 68 F.3d 857, 859 (5th Cir. 1995) (holding that a debtor’s second successive motion for reconsideration of bankruptcy court’s dismissal order did not extend time for appealing dismissal order).

³⁰ *See, e.g., Duggan v. FreedomRoads LLC*, ARB No. 2026-0041, ALJ No. 2026-CFP-00002, slip op. at 2 (ARB May 29, 2026); *Phox*, ARB No. 2021-0057, slip op. at 2-3; *Henin v. Soo Line R.R. Co.*, ARB No. 2019-0028, ALJ No. 2017-FRS-00011, slip op. at 2 (ARB Mar. 22, 2019).

³¹ *Vicuna v. Westfourth Architecture, P.C.*, ARB No. 2015-0034, ALJ No. 2012-LCA-00023, slip op. at 3 (ARB Apr. 6, 2015).

In determining whether to toll a limitations period, the Board has recognized several principal situations in which equitable tolling may be warranted. Those include: “(1) when the movant has raised the precise statutory claim in issue but has done so in the wrong forum; (2) when the movant has in some extraordinary way been prevented from filing; and (3) when the movant has some excusable ignorance of the respondent’s discriminatory act.”³² The Board has held “that the foregoing circumstances are not exclusive, and a complainant’s inability to satisfy one is not necessarily fatal for [his or] her untimely appeal.”³³ Nonetheless, equitable tolling is a rare and “extraordinary measure that applies only when plaintiff is prevented from filing despite exercising that level of diligence which could reasonably be expected in the circumstances.”³⁴ The party seeking equitable relief “bears the burden of establishing the applicability of the equitable tolling principles.”³⁵ Although a pro se complainant “is afforded certain latitudes as a self-represented litigant, [he] is not excused from the rules of practice and procedure applicable to this proceeding merely because of his pro se status.”³⁶

Because Complainant does not assert that he had some excusable ignorance of the respondent’s discriminatory act, we will focus our attention on the first two commonly recognized scenarios where equitable tolling may apply as listed above.

A. Precise Statutory Claim Raised in the Wrong Forum

Although Complainant claims that “[m]isstatements from the investigator and Regional Director created confusion about proper forums,” the record does not indicate that Complainant filed the precise statutory

³² *Martin v. Paragon Foods*, ARB No. 2022-0058, ALJ No. 2021-FDA-00001, slip op. at 9 (ARB June 8, 2023).

³³ *See, e.g., Gemoll v. Microsoft Corp.*, ARB No. 2025-0016, ALJ No. 2024-SOX-00001, slip op. at 6-7 (ARB May 14, 2026) (citing *Smith v. Franciscan Physician Network*, ARB No. 2022-0065, ALJ No. 2020-ACA-00004, slip op. at 4 (ARB Jan. 13, 2023) (Order Denying Motion to Dismiss and Reestablishing Briefing Schedule) (citations omitted)); *Mazenko v. Pegasus Aircraft Mgmt., LLC.*, ARB No. 2021-0032, ALJ No. 2019-AIR-00001, slip op. at 3 (ARB Sept. 7, 2021) (Order Accepting Complainant’s Appeal and Setting Briefing Schedule) (internal citation omitted).

³⁴ *Veltri v. Bldg. Serv. 32B-J Pension Fund*, 393 F.3d 318, 322 (2d Cir. 2004).

³⁵ *Vicuna*, ARB No. 2015-0034, slip op. at 3.

³⁶ *Jeanty v. Lily Transp. Corp.*, ARB No. 2019-0005, ALJ No. 2018-STA-00013, slip op. at 12 (ARB May 13, 2020) (citations omitted).

claim in any forum other than WHD.³⁷ Furthermore, Complainant contradicts his assertion when he claims that, “[t]he record shows sustained diligence: pursuit of relief in *appropriate forums*”³⁸ If he diligently pursued relief in appropriate forums, then he was not misled or confused about the appropriate forum. Complainant has not connected how perceived misstatements by WHD affected his ability to timely file a motion for reconsideration with the ALJ or a timely petition for review with the Board.

B. Prevented From Filing in Some Extraordinary Way

Complainant alleges that he faced extraordinary circumstances preventing him from filing because “the Department exceeded mandatory regulatory timelines, failed to correct the administrative record, delayed or rejected filings for incorrect reasons.”³⁹ He argues further that “agency inaction and concealment prevented timely resolution despite Complainant’s diligence.”⁴⁰ He also cites the Department’s failure to provide him with the investigative file and the Department’s narrowing the scope of investigation as causing his delay.⁴¹

Despite Complainant’s assertions, none of the foregoing circumstances are “extraordinary” within the meaning of the doctrine. “Extraordinary circumstances’ is a very high standard that is satisfied only in cases in which even the exercise of diligence would not have resulted in timely filing.”⁴² Complainant’s assertions reflect, at most, ordinary procedural disputes: disagreement with the scope of an investigation, dissatisfaction with the pace of agency action, routine docketing or filing issues, and frustration with procedural rulings.

³⁷ Reply Br. at 3.

³⁸ *Id.* at 5 (emphasis added).

³⁹ Comp. Br. at 2.

⁴⁰ *Id.*

⁴¹ *Id.* at 9.

⁴² *Romero v. Coca Cola Co.*, ARB No. 2010-0095, ALJ No. 2010-SOX-00021, slip op. at 5 (ARB Sept. 30, 2010) (citing *Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999) (complete psychiatric disability during the entirety of the limitations period); *Alvarez-Machain v. United States*, 107 F.3d 696 (9th Cir. 1996) (incarceration in a foreign country for the entirety of the limitations period)).

Complainant expressed a desire to proceed electronically from outside the United States and demonstrated the ability to do so.⁴³ Complainant has not stated facts that demonstrate why he was prevented from timely filing. We have considered the other contentions presented by Complainant relating to the applicability of equitable tolling and conclude that they lack merit.

Because Complainant has failed to demonstrate that he raised his precise statutory claim in the wrong forum, that he was prevented from filing in some extraordinary way, that he had some excusable ignorance of the respondent's discriminatory act, or any other meritorious reason that equitable tolling should apply, we find that equitable tolling of the appeals deadline is not warranted in this case.

3. Equitable Estoppel

Complainant raised for the first time in his Reply Brief an equitable estoppel argument. "The Board, like the federal courts, does not generally consider arguments raised for the first time on appeal, nor evidence submitted for the first time on appeal"⁴⁴ Nonetheless, we address this issue to dispel any doubt.

As the Board discussed in *Martin v. Paragon Foods*, "[e]quitable estoppel examines the [employer or other] defendant's conduct and the extent to which the [complainant] has been induced to refrain from exercising his rights."⁴⁵ It applies when "a respondent or defendant prevents 'a complainant from suing in time by, for example, promising not to plead the limitations defense or by presenting fabricated evidence to negate any basis for a claim.'"⁴⁶

Complainant alleges that "coordinated and fraudulent concealment of material facts by the employer and related actors prevented timely investigation, determination, and adjudication."⁴⁷ It is unclear as to which facts this bare

⁴³ See First Motion for Reconsideration at 2 ("I request the Office of Administrative Law Judges to reopen my case and allow me to proceed from outside the United States electronically with the amendments to the complaint.").

⁴⁴ *Martin*, ARB No. 2022-0058, slip op. at 15.

⁴⁵ *Id.* at 8.

⁴⁶ *Id.* (quoting *Overall v. Tenn. Valley Auth.*, ARB Nos. 1998-0111, -0128, ALJ No. 1997-ERA-00053, slip op. at 39 (ARB Apr. 30, 2001)).

⁴⁷ Reply Br. at 4.

allegation refers or who the unnamed “related actors” are. Further, it appears that Complainant’s unsubstantiated allegation refers to a belief that Respondent concealed material facts before the WHD investigator, which does not support an allegation that Respondent prevented Complainant from timely filing his appeal with the Board. Similarly, with regard to his June 17, 2024 Motion to Dismiss, Complainant states:

Complainant reviewed dismissal procedures and reasonably understood, based on the Federal Rules of Civil Procedure, that a voluntary dismissal, whether by notice or court order, permits refiling. Acting on that understanding, Complainant sought dismissal using language consistent with refiling, as reflected in the dismissal order itself. Nothing in the order advised that refiling would be barred or that the dismissal would operate as a forfeiture of rights. Consistent with this intent, Complainant before dismissal communicated directly to Respondent that the matter would be refiled, placing Respondent on notice that the dismissal was procedural and protective.^[48]

Although Complainant allegedly communicated to Respondent his intent to refile his complaint, Complainant does not allege that Respondent induced him to file a motion to dismiss or otherwise prevented him from refiling his case with the ALJ or filing a timely appeal with the Board.

Because Complainant has failed to substantiate his claim that Respondent or anyone else prevented him from timely filing an appeal, equitable estoppel is not warranted in this case.

Lastly, Complainant alleges prejudice against him as a result of WHD’s alleged failure to include “evidence central to INA compliance.”⁴⁹ He cites “delay, investigative limitations, and procedural uncertainty”⁵⁰ as

⁴⁸ *Id.* at 3-4.

⁴⁹ *Id.* at 11.

⁵⁰ *Id.* at 13.

causing “concrete prejudice.”⁵¹ Complainant fails, however, to refer to any specific instance of “damage or detriment to [his] legal rights or claims.”⁵²

In *KP & L Electrical Contractors, Inc.*, the Board held that a party seeking to establish prejudice before the Board “must show actual prejudice, not just allege potential prejudice.”⁵³ The Board held that KP & L did not make a showing of actual prejudice sufficient to justify dismissal despite a lapse of three years and seven months from the time WHD issued its finding and the time it referred the case to the OALJ.⁵⁴ The Board stated that, “[s]uch generalized claims of prejudice simply do not suffice.”⁵⁵

Because Complainant has failed to allege any specific instances of damage or detriment to his legal rights or claims, we conclude that Complainant was not prejudiced by any action or inaction by WHD.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the ALJ’s Order of Dismissal and **AFFIRM** the ALJ’s Order Denying Motion for Reconsideration as untimely filed. Accordingly, the complaint is hereby **DENIED**.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge

⁵¹ *Id.* at 2.

⁵² *Prejudice*, BLACK’S LAW DICTIONARY (7th ed. 1999).

⁵³ *KP & L Elec. Contractors, Inc.*, ARB No. 1999-0039, ALJ No. 1996-DBA-00034, slip op. at 5 (ARB May 31, 2000) (citations omitted).

⁵⁴ *Id.* at 6.

⁵⁵ *Id.*