

U.S. Department of Labor

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



IN THE MATTER OF:

KENDRICK OYOLA,

ARB CASE NO. 2025-0048

COMPLAINANT,

ALJ CASE NO. 2024-NTS-00001

ALJ DANA ROSEN

v.

DATE: May 29, 2026

**WASHINGTON METROPOLITAN
AREA TRANSIT AUTHORITY
(WMATA),**

RESPONDENT.

Appearances:

For the Complainant:

Kendrick Oyola; *Pro Se*; Munster, Indiana

For the Respondent:

J. Clay Rollins, Esq. and Savannah L. McDonald, Esq.; *Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*; Washington, District of Columbia

Before BURRELL and KIKO, Administrative Appeals Judges

DECISION AND ORDER VACATING AND REMANDING

This case arises under the National Transit Systems Security Act (NTSSA) and its implementing regulations,¹ as well as the Patient Protection and Affordable Care Act (ACA) and its implementing regulations.² On March 15, 2019, Kendrick Oyola (Complainant) filed a complaint with the Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA), alleging that Washington

¹ 6 U.S.C. § 1142; 29 C.F.R. Part 1982 (2025).

² 29 U.S.C. § 218c; 29 C.F.R. Part 1984 (2025).

Metropolitan Area Transit Authority (Respondent) retaliated against him in violation of the NTSSA.³ On November 16, 2020, Complainant amended his claim to include alleged retaliation under the ACA.⁴ On September 27, 2023, OSHA dismissed the complaint and made several determinations including that Complainant's ACA claim was untimely and that there was insufficient evidence to establish a violation under the NTSSA.⁵

Complainant filed objections with the Office of Administrative Law Judges (OALJ) and requested a hearing before an Administrative Law Judge (ALJ).⁶ On February 24, 2025, Complainant filed a Motion to File a Point of Order.⁷ In the motion, Complainant argued that a change of venue was reasonable, but requested that the ALJ "hold off on ruling until he" filed for a change of venue because he wanted "the case to remain under DOL authority" and did not "want to enter a 'Kick-Out' program"⁸ Despite this, on March 18, 2025, the ALJ issued an Order dismissing the complaint with prejudice.⁹ Complainant filed a Motion for Reconsideration, contending that the ALJ prematurely dismissed the case and asserting that his intent was to outline the conditions to evaluate and fulfill prior to formally changing venue.¹⁰ On April 23, 2025, the ALJ denied Complainant's motion, restating that Complainant had demonstrated "good cause to grant the Motion for Change of Venue" and that the requirements of 29 C.F.R. §§ 1982.114(a) and (c) were satisfied and concluding that "[u]pon review of the file and the

³ Order Granting Complainant's Motion to Change Venue and Order Dismissing with Prejudice so Complainant May Remove for Change of Venue (Order) at 2.

⁴ OSHA Determination Letter at 1.

⁵ *Id.* at 2.

⁶ Order at 2.

⁷ *Id.* at 1. Although the ALJ referenced several times that Complainant filed a "Motion to Change Venue," it does not appear that Complainant filed a Motion to Change Venue. Indeed, Complainant specifically requested that the ALJ not make any ruling regarding venue "until he files a Motion for a Change of Venue." Complainant's Motion to File a Point of Order at 9.

⁸ Complainant's Motion to File a Point of Order at 9.

⁹ Order at 1. The ALJ did not address Complainant's ACA claim.

¹⁰ Complainant's Motion for Reconsideration and Clarification of Order Granting Change of Venue at 1.

arguments made, Complainant would be best served with his initial intention to pursue his complaint before the U.S. District Court.”¹¹

Complainant petitioned the Administrative Review Board (Board) to review the ALJ’s Order. Both parties filed briefs.

The Secretary of Labor has delegated to the Board the authority to issue final agency decisions in review or on appeal of matters arising under the NTSAA and the ACA.¹² The Board will affirm the ALJ’s factual findings if supported by substantial evidence, but reviews conclusions of law de novo.¹³

The NTSSA provides:

[I]f the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.¹⁴

To comply with the NTSSA “kick-out” or removal regulations, Complainant must file a copy of the federal court complaint with the ALJ or the Board, as appropriate, within seven days of filing.¹⁵

¹¹ Order Denying Complainant’s Motion for Reconsideration (Order Denying Reconsideration) at 1-2.

¹² 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).

¹³ *Harte v. Metro. Transp. Auth.*, ARB No. 2017-0002, ALJ No. 2015-NTS-00002, slip op. at 3 (ARB Aug. 20, 2019), *reissued with corrections*, ARB No. 2017-0002 (Sept. 6, 2019).

¹⁴ 6 U.S.C. § 1142(c)(7); *see also* 29 C.F.R. § 1982.114(a).

¹⁵ 29 C.F.R. § 1982.114(c).

The ACA sets forth a similar kick-out mechanism:

If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, 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 without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.^{16]}

As with the NTSSA, if the complainant elects to kick out to federal district court under this provision, he must file a copy of the federal court complaint with the ALJ or the Board, as appropriate, within seven days of filing.¹⁷

Complainant argues that the ALJ prematurely dismissed his case and asserts that he neither filed in district court nor intended to opt out of the administrative proceedings.¹⁸ He requests that the Board vacate the ALJ's Order.¹⁹

We conclude the NTSSA and ACA kick-out requirements were not satisfied. Complainant did not “bring an action at law or equity for de novo review in” district court regarding his NTSSA or ACA whistleblower claims. The ALJ did not find that Complainant filed a copy of a federal court complaint, nor does the record support

¹⁶ 15 U.S.C. § 2087(b)(4) (incorporated by 29 U.S.C. § 218c(b)(1)); *see also* 29 C.F.R. § 1984.114(a).

¹⁷ 29 C.F.R. § 1984.114(c).

¹⁸ Complainant's Petition for Review at 2-3.

¹⁹ *Id.* at 5.

that Complainant filed his whistleblower complaint in federal court.²⁰ Significantly, Complainant expressly stated in his Motion to File a Point of Order that he wanted “the case to remain under DOL authority” and that he did “not want to enter a ‘Kick-Out’ program.”²¹ Thus, the ALJ erred in dismissing Complainant’s complaint with prejudice.

Complainant also requests that his case be remanded to OSHA to address his procedural and concerns with the investigation.²² Neither the Board nor the ALJ has the authority to remand a complaint to OSHA.²³ Rather, an ALJ reviews a complaint de novo and “will hear the case on the merits or dispose of the matter without a hearing if the facts and circumstances warrant.”²⁴ Thus, Complainant’s request to remand to OSHA is denied.

²⁰ Order at 1-3, Order Denying Reconsideration at 1-3. On November 10, 2023, Complainant filed a Petition for Writ of Mandamus in the Court of Appeals for the D.C. Circuit requesting the Court force OSHA to schedule a field investigation. On September 25, 2024, the D.C. Circuit dismissed Complainant’s petition in part and denied in part because of a lack of jurisdiction and because Complainant had alternative remedies of exhausting the administrative process and then appealing the final agency action. Respondent contends that Complainant’s petition demonstrated his “interest in pursuing his claims in another venue.” Respondent’s Br. at 3. However, Complainant’s Petition for Writ of Mandamus did not bring an action to review his NTSSA or ACA claims de novo. On March 19, 2025, Complainant filed a Petition for Emergency Review in the U.S. Court of Appeals for the D.C. Circuit, challenging the ALJ’s Order. On June 12, 2025, the U.S. Court of Appeals for the D.C. Circuit denied the petition, stating that Complainant had alternative remedies of completing the administrative process and appealing the final agency decision.

²¹ Motion for Point of Order at 9.

²² Complainant’s Petition for Review at 3-5.

²³ See 29 C.F.R. §§ 1982.109(c) and 1982.110.

²⁴ 29 C.F.R. § 1982.109(c).

Accordingly, we vacate the ALJ's Order dismissing Complainant's complaint with prejudice, and remand the matter to the ALJ for further proceedings.

SO ORDERED.

THOMAS H. BURRELL
Administrative Appeals Judge

PHILIP G. KIKO
Administrative Appeals Judge