

**U.S. Department of Labor**

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



**IN THE MATTER OF:**

**MICKEDA S. BARNES,**

**ARB CASE NO. 2025-0086**

**COMPLAINANT,**

**ALJ CASE NO. 2024-NTS-00004**

**ALJ JONATHAN C. CALIANOS**

**v.**

**DATE: January 13, 2026**

**RHODE ISLAND PUBLIC TRANSIT  
AUTHORITY,**

**RESPONDENT.**

**Appearances:**

***For the Complainant:***

**Mickeda S. Barnes; *Pro Se*; Rumford, Rhode Island**

***For the Respondent:***

**Jillian Folger-Hartwell, Esq.; *Littler Mendelson P.C.*; Providence,  
Rhode Island**

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

**ORDER DENYING REQUEST FOR EXTENSION OF TIME AND OF  
ADMINISTRATIVE CLOSURE**

This case arises under the employee protection provisions of the National Transit Systems Security Act (NTSSA) and the Federal Railroad Safety Act (FRSA) and their implementing regulations.<sup>1</sup> On April 1, 2025, Administrative Law Judge (ALJ) Jonathan C. Calianos issued a Decision and Order (D. & O.) granting Respondent Rhode Island Public Transit Authority (RIPTA)'s motion for summary judgment and denying Complainant Mickeda Barnes' complaint.<sup>2</sup> On August 21,

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<sup>1</sup> 6 U.S.C. § 1142; 49 U.S.C. § 20109; 29 C.F.R. Part 1982 (2025).

<sup>2</sup> Respondent styled its motion as a motion to dismiss. However, the ALJ determined that the motion was more properly considered as a motion for summary decision because it

2025, Complainant filed (via email) a request for an extension of time to file a petition for review with the Administrative Review Board.

### BACKGROUND AND PROCEDURAL HISTORY

This case has a long and discursive history and only the events relevant to the disposition of Complainant's request are recounted here. On February 12, 2015, Complainant suffered a work-related injury and was terminated by RIPTA the following day.<sup>3</sup> On August 13, 2016, Complainant filed a complaint that was referred to the Department of Labor's Occupational Safety and Health Administration (OSHA). OSHA dismissed the complaint as untimely. Complainant appealed this finding and the case was assigned to ALJ Timothy J. McGrath. On March 1, 2017, Complainant filed an unopposed motion to dismiss, which ALJ McGrath granted, dismissing the complaint with prejudice.<sup>4</sup> During 2016 and 2017, Complainant also filed a workers' compensation claim with the Rhode Island Department of Labor and Training, an action in the U.S. District Court for the District of Rhode Island alleging Respondent discriminated against her in violation of various state and federal laws, and an action in Rhode Island Superior Court alleging Respondent violated her constitutional and civil rights.<sup>5</sup>

On April 25, 2018, the parties reached a global settlement agreement. Under the terms of this agreement, Complainant released all claims against RIPTA that arose prior to April 25, 2018, excluding any claims for unemployment insurance or workers' compensation benefits. Additionally, Respondent was to pay Complainant a total of \$150,000.00, allocated as follows: (1) \$55,000.00, less applicable withholdings, for Complainant's economic loss; (2) \$55,000.00 for Complainant's non-economic damages; and (3) \$40,000.00 for attorney fees.<sup>6</sup> Following the settlement, Complainant's suits in the U.S. District Court for the District of Rhode Island and the Rhode Island Superior Court were dismissed. Despite the settlement, Complainant brought various new suits against RIPTA. These suits were ultimately dismissed by the Rhode Island Superior Court, which found that

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referred to matters outside the pleadings. We agree with the ALJ's decision to treat the motion as a motion for summary decision. *See* 29 C.F.R. § 18.72 (providing for summary decision in proceedings before an ALJ when "there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law."); *cf.* Fed. R. Civ. P. 12(d) (requiring that a motion to dismiss made under Rule 12(b)(6) or 12(c) be treated as a motion for summary judgment under Rule 56 if "matters outside the pleadings are presented to and not excluded by the court" in the motion.).

<sup>3</sup> D. & O. at 2.

<sup>4</sup> *Id.* at 2-3.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.* at 3-4.

the 2018 settlement was a “valid and enforceable agreement” and the new claims were barred by the agreement as they were not related to workers’ compensation.<sup>7</sup>

On February 25, 2024, the Social Security Administration (SSA) sent Complainant a letter explaining that it was reviewing her eligibility for Social Security Disability (SSDI) benefits based on her earnings from July 2022 and continuing through the date of the letter.<sup>8</sup> The following month, SSA sent Complainant another letter informing her of its decision that she no longer qualified for SSDI benefits as of July 2022. On May 10, 2024, Complainant filed a complaint with OSHA alleging that Respondent retaliated against her in violation of the NTSSA and FRSA. Specifically, Complainant alleged that on April 1, 2024, Respondent fraudulently provided information to the IRS, affecting her SSDI benefits, in retaliation for making safety complaints.<sup>9</sup> On May 23, 2024, OSHA issued a preliminary order stating that because the complaint did not set forth all the elements of a *prima facie* allegation of unlawful retaliation, it was not docketed for investigation. On June 6, 2024, Complainant timely objected to the preliminary order and requested a hearing before the Office of Administrative Law Judges. The case was docketed with ALJ Calianos.

On December 19, 2024, Respondent filed a motion to dismiss and a brief in support of the motion. On February 5, 2025, Complainant filed a brief in opposition to the motion to dismiss. On April 1, 2025, the ALJ issued a Decision and Order Granting Respondent’s Motion for Summary Decision and Denying Complaint.<sup>10</sup> In the D. & O., the ALJ found that: (1) Respondent was not covered under the FRSA as it did not meet the definition of a “railroad carrier;” (2) Respondent was covered under the NTSSA as it fell within the definition of a “public transportation agency;” (3) the complaint was not timely filed as it was not filed within 180 days of the alleged adverse action; (4) Respondent’s reporting of the settlement amounts to the IRS was not an adverse action; and (5) Complainant’s alleged protected activity was not a contributing factor in Respondent’s reporting of the settlement amounts to the IRS.<sup>11</sup> The ALJ also found that, contrary to Complainant’s allegation that RIPTA reported the settlement to the IRS on April 1, 2024, RIPTA reported the \$55,000.00 as wages on a Form W-2 and deducted the proper tax withholdings from that

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

<sup>8</sup> *Id.* at 4-5.

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

<sup>10</sup> As previously described, the ALJ treated the Motion to Dismiss as a Motion for Summary Decision under 29 C.F.R. § 18.72. D. & O. at 5.

<sup>11</sup> *Id.* at 6-13.

amount on May 17, 2018.<sup>12</sup> Respondent's treatment of the \$55,000 as W-2 wages was consistent with the settlement agreement.<sup>13</sup>

On July 16, 2025, about three and a half months after the ALJ issued the D. & O., Complainant left a voicemail with the ALJ's chambers requesting an update on the case's status. The ALJ's Senior Staff Attorney emailed Complainant notifying her that the D. & O. was issued on April 1 and provided Complainant with a courtesy copy. Complainant then alleged that she had not previously received a copy of the D. & O. The ALJ treated Complainant's communications as a request to reissue the D. & O. and, on August 6, 2025, issued an Order Denying Complainant's Request to Reissue Decision and Order Granting Respondent's Motion for Summary Decision and Denying Complaint (Order Denying Reissuance).<sup>14</sup> The ALJ noted that the Office of Administrative Law Judges' internal Case Tracking System showed that a copy of the D. & O. was served on Complainant at her email address of record on April 1, 2025. The ALJ further noted that Complainant confirmed that her email address of record was correct and she had used the same email address when communicating with the ALJ's chambers regarding the case.<sup>15</sup> Accordingly, the ALJ found that there was insufficient basis to reissue the D. & O.<sup>16</sup>

On August 21, 2025, Complainant filed, via email, a request for an extension of time to file a petition for review with the Administrative Review Board (Board) of the D. & O. This request was filed more than 14 days after the issuance of the D. & O. and was thus untimely as the NTSSA regulations require that a petition for review be filed within 14 days of the date of the decision for which review is sought.<sup>17</sup> On September 4, 2025, the Board issued a Notice and Briefing Order (Briefing Order) ordering Complainant to file a brief explaining why the Board should grant the extension request, especially in light of its untimeliness. Complainant filed a brief on September 18. On September 29, 2025, Respondent filed a Response opposing Complainant's request for extension.

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<sup>12</sup> *Id.* at 9-10.

<sup>13</sup> *Id.* at 10.

<sup>14</sup> *Barnes v. R.I. Pub. Transit Auth.*, ALJ No. 2024-NTS-00004 (ALJ Aug. 6, 2025) (Order Denying Complainant's Request to Reissue Decision and Order Granting Respondent's Motion for Summary Decision and Denying Complaint) (hereinafter "Order Denying Reissuance").

<sup>15</sup> Order Denying Reissuance at 2.

<sup>16</sup> *Id.*

<sup>17</sup> 29 C.F.R. § 1982.110(a).

## DISCUSSION

As we noted in the Briefing Order, the period in which a party seeking review of an ALJ decision may file a petition for review with the Board is not jurisdictional and is therefore subject to equitable modification.<sup>18</sup> Equitable tolling and equitable estoppel are two different and distinct equitable doctrines which this tribunal and courts have applied to modify a filing deadline.<sup>19</sup> Equitable tolling is a rare and “extraordinary measure that applies only when [a party] is prevented from filing despite exercising that level of diligence which could reasonably be expected in the circumstances.”<sup>20</sup> In determining whether to toll the time in which a party may seek review, the Board has recognized several classes of situations in which a moving party may be entitled to equitable tolling, including (1) when the movant has raised the precise statutory claim at 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.<sup>21</sup> These situations are not exclusive, and a party’s inability to satisfy one is not necessarily fatal for his or her untimely appeal.<sup>22</sup> The party requesting tolling bears the burden of establishing circumstances that justify modifying the appeal deadline.<sup>23</sup>

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<sup>18</sup> See, e.g., *Dickerson v. Iteris, Inc.*, ARB No. 2023-0026, ALJ No. 2019-SOX-00009, slip op. at 3 (ARB July 28, 2023) (Order Denying Motion to Dismiss and Reestablishing Briefing Schedule).

<sup>19</sup> *Martin v. Paragon Foods*, ARB No. 2022-0058, ALJ No. 2021-FDA-00001, slip op. at 8 (ARB June 8, 2023) (citing *Hyman v. KD Res.*, ARB No. 2009-0076, ALJ No. 2009-SOX-00020, slip op. at 6 (ARB Mar. 31, 2010). “Equitable tolling focuses on the [employee-complainant’s] excusable ignorance of the employer’s discriminatory act. Equitable estoppel, in contrast, examines the [employer or other] defendant’s conduct and the extent to which the [complainant] has been induced to refrain from exercising his rights.” *Id.* Based on Complainant’s request, we analyze her claim under the “equitable tolling” doctrine.

<sup>20</sup> *Id.* at 9 (quoting *Veltri v. Bldg. Serv. 32B-J Pension Fund*, 393 F.3d 318, 322 (2d Cir. 2004)).

<sup>21</sup> *Id.*

<sup>22</sup> See, e.g., *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).

<sup>23</sup> *Smith v. Franciscan Physician Network*, ARB No. 2022-0065, ALJ No. 2020-ACA00004, slip op. at 4 (ARB Jan. 13, 2023) (Order Denying Motion to Dismiss and Reestablishing Briefing Schedule) (citing *Mazenko*, ARB No. 2021-0032, slip op. at 3).

## 1. Computation of the Time to Seek Review

The regulations implementing the NTSSA provide that any party seeking review of a decision of the ALJ must file a petition for review with the ARB. A petition “must be filed within 14 days of the date of the decision of the ALJ.”<sup>24</sup> Under the Board’s rule for computing time, Complainant was required to submit a petition for review by April 15, 2025, in order obtain review.<sup>25</sup> No provision of the NTSSA regulations nor any Board rule allows for the clock to be “reset” to the date on which the Order Denying Reissuance was issued. The reason for this is self-evident: allowing the computation of time to begin on the date that an order denying reissuance is issued would obliterate the Board’s equitable tolling principles and permit parties to enlarge the time in which they may seek review by simply requesting that a decision be reissued. This is of particular concern given that the Office of Administrative Law Judge’s Rules of Practice and Procedure (OALJ Rules) do not specifically address requests for reissuance and we are not aware of an explicit limitation on the time in which such requests can be filed. This is in contrast to motions for reconsideration, which, under the OALJ Rules, must be filed no later than 10 days after service of the decision on the moving party.<sup>26</sup>

Complainant’s request for an extension was not filed until August 21, more than four months after the expiration of the time in which Complainant was entitled to file a petition for review. The Board takes into account the degree of untimeliness when considering a request for extension and Complainant’s request is extremely untimely.<sup>27</sup>

## 2. Extension of Time as a Reasonable Accommodation

In her brief in support of extension, Complainant stated that, due to physical disabilities, she “cannot do any typing for this appeal, and this is the reason why [Complainant] is requesting extra time to submit a Petition for Review[.]”<sup>28</sup> She also stated that:

Due to all of the injuries she had at RIPTA she needs to have reasonable accommodations ADA Act to help her file these appeal [sic] to the Administrative Review Board and

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<sup>24</sup> 29 C.F.R. § 1982.110(a).

<sup>25</sup> See 29 C.F.R. § 26.2(b).

<sup>26</sup> 29 C.F.R. § 18.93.

<sup>27</sup> Cf. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993) (recognizing that whether a party’s neglect of a court-ordered deadline is excusable depends on various factors, including “the length of the delay[.]”).

<sup>28</sup> Comp. Br. at 15.

that [the ALJ] knew that [Complainant] had already requested to have ADA reasonable accommodations in the beginning of her case when it started and that she would need more time with typing due to the Traumatic brain injury, Right shoulder injury, and Left Traumatic hand carpal tunnel and when the weather changes [Complainant's] fingers lock up[.]<sup>29]</sup>

The Board, as an instrumentality of the federal government, is not covered by the Americans with Disabilities Act (ADA).<sup>30</sup> However, the Board is bound by 29 C.F.R. Part 33, authorized, in part, by section 504 of the Rehabilitation Act, which may require certain accommodations for a covered individual to utilize the Board's services.<sup>31</sup>

Additionally, we note that courts have found that requests for accommodation can be granted as a matter of judiciary policy.<sup>32</sup> In one decision, the U.S. District Court for the District of Hawaii granted a complainant's request for an extension of the deadline to file an amended motion in order to accommodate the delays that the defendant anticipated would occur because of his schizophrenia symptoms.<sup>33</sup>

Given the facts in this case, however, we find that it is not necessary to decide whether 29 C.F.R. Part 33 requires the Board to grant Complainant's request for an extension of time to file a petition for review. We similarly do not need to decide whether general principles of equity and access to justice warrant an extension of the time to file in order to accommodate Complainant's disabilities. This is because Complainant alleges that she did not receive the D. & O. until the ALJ's chambers provided her with a courtesy copy on July 16, 2025. Accordingly, Complainant has not—nor could she—allege that her failure to seek review of the decision in the period from April 1 to July 16 is even in part attributable to the difficulties resulting from her disabilities. Had Complainant, prior to April 15, requested an extension on the basis that her disabilities impede the timely preparation of a petition for review, we would have been inclined to grant such a

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<sup>29</sup> *Id.*

<sup>30</sup> *See Henrickson v. Potter*, 327 F.3d 444, 447 (5th Cir. 2003) (observing that “the entire federal government is excluded from the coverage of the ADA”).

<sup>31</sup> *See, e.g.*, 29 C.F.R. § 33.6, “General prohibitions against discrimination.”

<sup>32</sup> *See, e.g., Patrick v. U.S. Postal Serv.*, 2010 WL 4879161, at \*4 (D. Ariz. Nov. 23, 2010) (ordering the appointment of an American Sign Language interpreter because “[n]ot only is it right and just to do so, the District Court is required” to do so pursuant to guidelines promulgated by the Administrative Office of the United States Courts).

<sup>33</sup> *United States v. Maria*, 2025 WL 3141081, at \*4 (D. Haw. Nov. 10, 2025).

request. Similarly, had Complainant been able to attribute the entirety of her delay in seeking review to her disabilities we would have looked upon her request differently. Here, however, the bulk of Complainant's delay in seeking review is a result of her alleging she was not aware of the D. & O. until July 16, three and a half months after it was issued.

### 3. Equitable Tolling

As previously stated, the period in which a party may seek review of an ALJ's decision is not jurisdictional and is therefore subject to equitable modification.<sup>34</sup> We now consider whether Complainant has alleged facts that would justify the application of equitable tolling. In her brief, Complainant states that she did not receive a copy of the D. & O. when it was served on her via email on April 1, 2025.<sup>35</sup> Complainant does not provide any evidence to buttress this claim. The most probative evidence in the record is the ALJ's statement that the Office of Administrative Law Judge's Case Tracking System shows that a copy of the D. & O. was served on Complainant at her email address of record on April 1, 2025.<sup>36</sup> The record confirms that the email address in the Case Tracking System is the address she regularly uses and the one she consented to receive service at. Complainant does not allege that there were any circumstances that prevented her from accessing this email address or otherwise impeded her from receiving the D. & O.

We have recognized that a party's assertion that it did not see a decision served on him via email can, in some circumstances, justify equitable tolling of a filing deadline. Specifically, in *Mazenko v. Pegasus Aircraft Management, LLC*, the Board found that equitable tolling was warranted when a complainant alleged that a change in the form of service, without notification to the parties, prevented him from timely filing a petition for review.<sup>37</sup> In *Mazenko*, the Board addressed a situation where, due to the COVID-19 pandemic, the ALJ changed the form of service from regular mail *and* email to only email. The ALJ provided notification of this change to the parties and their counsel via a different email address than the one she had previously used to communicate with the parties.<sup>38</sup> As a result, complainant's counsel did not see the notification email nor the email containing the ALJ's decision until after the time in which to seek review had elapsed. Complainant's counsel filed a petition for review the day after he independently

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<sup>34</sup> *Dickerson*, ARB No. 2023-0026, slip op. at 3.

<sup>35</sup> Comp. Br. at 15.

<sup>36</sup> Order Denying Reissuance at 2.

<sup>37</sup> *Mazenko* ARB No. 2021-0032, slip op. at 4.

<sup>38</sup> *Id.* at 4.

learned of the decision.<sup>39</sup> The Board found that these circumstances warranted equitable tolling.<sup>40</sup> In the instant case, there are no comparable additional circumstances that would explain or excuse Complainant’s failure to see the email containing the D. & O. During the entire time her case was pending before the ALJ, service was accomplished through email alone. Since the ALJ has confirmed that the Case Tracking System shows that the D. & O. was sent to Complainant at the same address she both previously and subsequently used to communicate with the ALJ and his staff, we do not view the bare assertion that she did not receive the D. & O. as sufficient to justify the application of equitable tolling. Had the ALJ been unable to confirm that the D. & O. was sent to Complainant through the Case Tracking System or had the ALJ received a “bounce-back” email or similar error message indicating a problem with delivering the email, we would be willing to give additional credence to Complainant’s assertion that she did not receive the email.

We note that in two recent cases the Board found that a pro se complainant’s assertion that it did not receive an order issued by the Board was grounds for modification of briefing schedules previously established by the Board. In *Cooley v. MISA Imports, Inc.*, the Board found that a complainant’s assertion that he did not receive an order issued by the Board and served on the complainant via certified mail was sufficient to warrant granting the complainant’s motion for reconsideration after the Board had dismissed his case for failing to timely file an opening brief.<sup>41</sup> Similarly, in *Hukman v. Ed’s Station*, the Board issued an Order to Show Cause to a complainant ordering that she show cause as to why the Board should not dismiss her case for failing to file an opening brief as required by the briefing order.<sup>42</sup> In response, the complainant averred that they did not receive the Board’s email. The Board accepted this and issued an Order Reestablishing Briefing Schedule.<sup>43</sup>

Both of these cases, however, dealt with compliance with the Board’s briefing orders and the complainants’ claims that they did not receive certain emails were

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<sup>39</sup> *Id.* at 2.

<sup>40</sup> *Id.* at 4.

<sup>41</sup> *Cooley v. MISA Imports Inc.*, ARB No. 2025-0005, ALJ No. 2024-SOX-00037 (ARB Jan.22, 2025) (Order Granting Reconsideration, Vacating Decision and Order Dismissing Petition for Review, and Reestablishing Briefing Schedule).

<sup>42</sup> *Hukman v. Ed’s Stations, Inc.*, ARB No. 2025-0003, ALJ No. 2023-FDA-00005 (ARB Jan. 24, 2025) (Order Reestablishing Briefing Schedule).

<sup>43</sup> In explaining its decision, the Board stated that “although system records reflect that the Board’s electronic filing system (EFS) successfully generated and sent notice of the Briefing Order to Complainant’s registered email account on November 13, 2024, we accept Complainant’s representation that she did not see that notice in her email and did not learn of the Briefing Order at the time it was issued.” *Id.* at 3.

made in response to orders to show cause. The standard of good cause shown is less than the standard that must be met to warrant the application of equitable tolling principles. Thus, we do not view our order today to be in conflict with the Board's orders in either *Cooley* or *Hukman*.

#### CONCLUSION

Complainant did not timely seek review of the ALJ's decision. Complainant's assertion that she did not receive a copy of the D. & O. when the ALJ's staff emailed it to her on April 1, 2025, is insufficient to warrant the application of equitable tolling, especially given the evidence that the D. & O. was properly served on her via email. Accordingly, we **DENY** Complainant's request for an extension of time to file a petition for review. For this reason, we hereby administratively close this matter.

**SO ORDERED.**

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

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