U.S. Department of Labor

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

IN THE MATTER OF:

SHASHI MEHROTRA,

COMPLAINANT,

v.

GENERAL ELECTRIC COMPANY, GE POWER, and GENERAL ELECTRIC INTERNATIONAL, INC.,

RESPONDENTS.

ARB CASE NO. 2022-0060

ALJ CASE NO. 2022-SOX-00014
ALJ JONATHAN CALIANOS

DATE: September 21, 2023

Appearances:

For the Complainant:
Shashi Mehrotra; *pro se*; Niskaynua, New York

For the Respondent:
Anlisa Bell, Esq. and Davis Woodruff, Esq., *Seyforth Shaw, LLP*; New York, New York

Before HARTHILL, Chief Administrative Appeals Judge, and WARREN, Administrative Appeals Judge

DECISION AND ORDER

WARREN, Administrative Appeals Judge:

This case arises under the employee protection provisions of the Sarbanes-Oxley Act of 2002 (SOX),[1] as amended, and its implementing regulations.[2]

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[1] 18 U.S.C. § 1514A.

[2] 29 C.F.R. Part 1980 (2023).

On August 9, 2022, the Administrative Law Judge (ALJ) issued an Order Granting General Electric Company's (GE or Respondent) Motion to Dismiss and Dismissing Claim (Order).[3] On August 11, 2022, the ALJ issued a Supplemental Order Granting Respondent's Motion to Dismiss and Dismissing Claim (Supplemental Order).[4] Shashi Mehrotra (Mehrotra or Complainant) timely petitioned the Administrative Review Board (ARB or Board) for review. For the reasons set forth below, we **AFFIRM** the ALJ's Order.

BACKGROUND

Mehrotra worked for GE, in the GE Power division.[5] He reported a compliance violation on October 5, 2018, which he alleges led to his eventual reduction in force (RIF) selection and blacklisting for rehire by GE.[6] He was informed of the RIF on April 29, 2019, but his employment was terminated on June 21, 2019.[7] After his termination, Mehrotra applied for jobs with GE, hoping to gain reemployment.[8] On March 16, 2020, after applying for at least 50 jobs without being hired, Mehrotra filed an internal complaint with GE.[9] On December 17, 2020, Mehrotra filed a complaint with OSHA alleging that his job was terminated and he was blacklisted from rehire by GE due to his protected activity.[10] At the point of filing his OSHA complaint, Mehrotra had applied for 69 jobs.[11]

The ALJ held a conference call on May 31, 2022, wherein he issued a bench decision finding that Mehrotra's complaint was untimely.[12] He subsequently incorporated the transcript of his bench decision in his Order.[13] The ALJ found that Mehrotra's filing with OSHA was untimely for both the termination and

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3 *Mehrotra v. Gen. Elec. Co.*, ALJ No. 2022-SOX-00014 (ALJ Aug. 9, 2022) (Order Granting Respondent's Motion to Dismiss and Dismissing Claim).

4 *Mehrotra v. Gen. Elec. Co.*, ALJ No. 2022-SOX-00014 (ALJ Aug. 11, 2022) (Supplemental Order Granting Respondent's Motion to Dismiss and Dismissing Claim).

5 May 31, 2022 Conference Call Transcript (Trans.) at 7.

6 Comp. Br. at 2-4.

7 Trans. at 7.

8 Trans. at 7; Comp. Br. at 4.

9 Trans. at 7-8; *see also* Respondent's Motion to Dismiss, Ex. J.

10 Trans. at 8.

11 Comp. Br. at 6.

12 Trans. at 26.

13 The Supplemental Order was issued on August 11, 2022, to include Mehrotra's appeal rights, which were omitted from the Order.

blacklisting claims and that there was no basis to equitably modify the filing deadline for these claims.[14]

Respondent filed a Motion to Dismiss, and the ALJ titled his order a dismissal. However, Respondent supported its motion with evidence, and the ALJ held a hearing and made factual findings. Regardless of the title of his Order, the ALJ converted the motion to dismiss to one for summary judgment.[15]

Mehrotra timely appealed to the Board.[16] On appeal, Mehrotra argues his termination date was June 30, 2020, as that was the date of his break in service from GE.[17] He further argues that four of the jobs he applied to fall within the 180-day filing deadline for SOX cases, and that those applications should be considered timely for his blacklisting claim.[18] Mehrotra argues that he had a good faith belief in GE's processes, which is why he relied on internal complaints before contemplating other avenues of redress.[19] He also argues that the SOX filing deadline should be equitably tolled, as he did before the ALJ.[20]

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the ARB to issue final agency decisions for the Department in cases brought under SOX.[21] We review the ALJ's grant of summary decision de novo.[22] When reviewing summary decision, we

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14 Trans. at 27.

15 *See* 29 C.F.R. § 18.72(f) (2023).

16 Complainant filed a Motion to Expedite with the Board on May 5, 2023. As the Board is issuing this Decision and Order, the Complainant's Motion is denied as moot.

17 Comp. Br. at 9-10. Mehrotra opted to delay his official break in service and forwent his pension for a period of several months while he continued to apply for jobs to be rehired by GE. June 30, 2020, reflects the date at which Mehrotra stopped accruing service for his pension, which included a 6 month "Protected Service Period" wherein he could attempt to be rehired by GE. *Id.* at 10.

18 Comp. Br. at 16.

19 Comp. Br. at 4; *see also* Trans. at 10 ("[A] lot of my emails would show that I have complete faith in the integrity of GE's different channels for their integrity issues.")

20 Comp. Br. at 18-19.

21 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).

22 *Johnson v. The Wellpoint Cos., Inc.*, ARB No. 2011-0035, ALJ No. 2010-SOX-00038, slip op. at 5 (ARB Feb. 25, 2013) (citations omitted) (citing *Boyd v. EPA*, ARB No. 2010-

view the record in the light most favorable to the non-moving party.[23]

DISCUSSION

At the outset, we address the ALJ's bench decision and subsequent brief written Order. While the Board respects an ALJ's authority to effectively manage their docket to achieve orderly and expeditious dispositions of cases, ALJs should cautiously proceed in issuing dispositive decisions and orders that incorporate transcripts. As we have said before, substituting a transcript for a thoroughly written decision with record cites and applicable cases may expedite matters, but "it leaves the parties and the Board scrambling to divine by guesswork the decision's reasoning and outcome."[24] In this particular case, and to avoid further delay, the Board was able to discern the basis for the ALJ's decision but in other cases, particularly those with review standards that require the Board to rely on the ALJ's findings as the basis of our decision, remand may be necessary. Regardless of the nature of the disposition, the parties to each case, as well as the Board, benefit from clear references to the law and the relevant facts in the record in matters of final disposition.

1. Timeliness of the Allegations

A complainant pursuing a whistleblower retaliation claim under SOX must meet certain deadlines.[25] These deadlines apply whether the complainant is represented by counsel or is proceeding pro se.[26] Potential complainants are responsible for determining which statutes and regulations, and which deadlines, apply to their cases and for meeting that deadline: "'[I]gnorance of the law is no excuse' for missing a filing deadline."[27]

Employees alleging employer retaliation in violation of SOX must file their complaints with OSHA within 180 days of the alleged retaliatory act.[28] The 180-day

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0082, ALJ No. 2009-SDW-00005, slip op. at 2-3 (ARB Dec. 21, 2011)) (other citation omitted).

[23] *Vinnett v. Exelon Generation*, ARB No. 2023-0005, ALJ No. 2022-ERA-00002, slip op. at 4 (ARB Mar. 31, 2023) (citation omitted).

[24] *Perkins v. Cavicchio Greenhouses, Inc.,* ARB No. 2022-0018, ALJ No. 2019-ACA-00005, slip op. at 10 n.59 (ARB Sept. 30, 2022).

[25] 18 U.S.C. § 1514A(b)(2)(D).

[26] *Martin v. Paragon Foods*, ARB No. 2022-0058, ALJ No. 2021-FDA-00001, slip op. at 6 (citations omitted).

[27] *Id.* (quoting *Warner v. Xcel Energy*, ARB No. 2008-0112, ALJ No. 2008-ERA-00002, slip op. at 8 (ARB Mar. 29, 2010)).

[28] 18 U.S.C. § 1514A(b)(2)(D).

limitations period begins to run when an employee receives "final, definitive, and unequivocal notice of the adverse employment action."[29] The claim accrues on "[t]he date that an employer communicates a decision to implement such a decision, rather than the date the consequences of the decision are felt."[30] Thus, "the time for filing a complaint begins when the employee knew or should have known of the adverse action, regardless of the effective date."[31] Here, Mehrotra claims that he was subject to two retaliatory acts by GE. First, his employment was terminated. Second, GE refused to rehire him—a claim of blacklisting. We handle each in turn.

For the termination claim, the fact that GE informed Mehrotra of the termination date at some time in the future does not remove the situation from the general rule that final notice is when a claim accrues, which the Supreme Court first enunciated in a Title VII case in *Delaware State College v. Ricks.*[32] The *Ricks* rule provides that the limitations period begins to run from the date that a complainant learns of the employer's final decision. That rule:

> is premised on an employee's having been given final and unequivocal notice of an employment decision having delayed consequences. Only upon receipt of such notice does the filing period begin to run. Until that time, there is the possibility that the discriminatory decision itself will

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[29] *Bauche v. Masimo Corp.*, ARB No. 2022-0035, ALJ No. 2022-SOX-00010, slip op. at 7 (ARB Sept. 27, 2022) (citing *McManus v. Tetra Tech Constr. Inc.*, ARB No. 2016-0063, ALJ No. 2016-SOX-00012, slip op. at 3 (ARB Dec. 19, 2017) (quoting *Rollins v. Am. Airlines, Inc.*, ARB No. 2004-0140, ALJ No. 2004-AIR-00009, slip op. at 2-3 (ARB Apr. 3, 2007)); *see also Delaware State Coll. v. Ricks,* 449 U.S. 250, 258 (1980) (". . . the filing limitations periods therefore commenced—at the time the [adverse action] decision was made and communicated.").

[30] *Chardon v. Fernandez,* 454 U.S. 6, 8 (1981) (citing *Delaware State College v. Ricks,* 449 U.S. 250, 258 (1980) (holding that the statute of limitations starts on date employee receives notice of imminent discharge because "the proper focus is on the time of the *discriminatory act*, not the point at which the consequences of the act become painful"); *Poli v. Jacobs Eng'g Grp., Inc.,* ARB No. 2011-0051, ALJ No. 2011-SOX-00027, slip op. at 5 (ARB Aug. 31, 2012) (citing *Overall v. Tenn. Valley Auth.*, ARB Nos. 1998-0111, -0128, ALJ No. 1997-ERA-00053, slip op. at 40 (ARB Apr. 30, 2001)); *Jenkins v. U.S. EPA*, ARB No. 1998-0146, ALJ No. 1988-SWD-00002, slip op. at 13 (ARB Feb. 28, 2003) (citing *Ricks* and *Chardon*).

[31] *Swenk v. Exelon Generation Co.,* ARB No. 2004-0028, ALJ No. 2003-ERA-00030, slip op. at 4 (ARB Apr. 28, 2005) (citing *Riden v. Tennessee Valley Auth.*, Case No. 1989-ERA-00049, slip op. at 2 (Sec'y July 18, 1990)).

[32] 449 U.S. at 259.

> be revoked, and the contemplated action not taken, thereby preserving the pre-decision status quo.[33]

Under *Ricks* and its progeny, a termination notice, which provides a delayed effective date, effectually commences the limitations period as the notice evidences an employer's definitive decision to end a complainant's employment, and it is that decision that forms the basis of a challenge to unlawful adverse action.[34] The fact that a termination notice includes a path for an employee to avoid the adverse consequences of the employer's stated decision, including by obtaining "other suitable employment" does not "render the decision equivocal" for purposes of the limitation period's commencement.[35]

Therefore, to be timely under SOX, Mehrotra was required to file his retaliation complaint with OSHA regarding his termination from GE, by October 26, 2019. He did not and, therefore, his complaint was untimely.

This same principal applies to Mehrotra's blacklisting for rehire claim. A Complainant's claim accrues "on the date when facts which would support a discrimination complaint were apparent or should have been apparent to a person similarly situated to the complainant with a reasonably prudent regard for his rights."[36] In cases of blacklisting where the party has direct notice, the claim accrues upon receipt of that notice.[37] The key inquiry is when an employee knows of the adverse action, which, in the case of a claim involving refusal to rehire or blacklisting, may be after the employer made their decision.[38] Here, where no such

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[33] *English v. Whitfield*, 858 F.2d 957, 961 (4th Cir. 1988); *see also Miller v. Int'l Tel. & Tel. Corp.*, 755 F.2d 20, 24 (2d Cir. 1985).

[34] *Ricks*, 449 U.S. at 257-58 (discharge with a delayed effective date contains only one discriminatory decision); *see also Green v. Brennan*, 578 U.S. 547, 561 (2016) (citing to *Ricks* regarding the "standard rule that a limitations period begins to run after a claim accrues, not after an inevitable consequence of that claim.").

[35] *English*, 858 at 962; *accord Graehling v. Village of Lombard, Ill.,* 58 F.3d 295, 297 (7th Cir.1995) ("a discharge with a deferred effective date entails only one discriminatory decision," which occurs when the employee receives notice of the discharge."); *Miller*, 755 F.2d at 25.

[36] *Overall v. Tenn. Valley Auth.*, ARB Nos. 1998-0111, -0128, slip op. at 37; *see also Cornwell v. Robinson*, 23 F.3d 694, 703 (2d Cir. 1994).

[37] *Johnsen v. Houston Nana, Inc.*, ARB 2000-0064, ALJ No. 1999-TSC-00004, slip op. at 6 (ARB Jan. 27, 2003) (reissued Feb. 10, 2003).

[38] *Beatty v. Inman Trucking Mgmt., Inc.*, ARB No. 2009-0032, ALJ Nos. 2008-STA-00020, -00021, slip op. at 4-5 (ARB June 30, 2010) (Complainants' claim of blacklisting accrued when Complainants learned their former employer provided a negative employment report to a reporting system for truck drivers, not when the employer made the negative employment report).

notice was given, the appropriate question for when the blacklisting for rehire claim accrues is when it was apparent or should have been apparent that a complainant's former employer was refusing to rehire them.[39]

The ALJ found that Mehrotra should have known about his alleged blacklisting by the time he filed an internal complaint with GE on March 16, 2020.[40] While Mehrotra did not use the term "blacklist" until a later date, the substance of his complaint with GE was one alleging that the company had refused to rehire him.[41] We agree with the ALJ that it was apparent to Mehrotra—or should have been apparent—that he was allegedly blacklisted for rehire at the time he felt there was reason to complain to GE about the company repeatedly not rehiring him, i.e., in March 2020. The fact that Mehrotra continued to apply for jobs after realizing that GE had allegedly blacklisted him does not keep his claim alive.[42] "To permit the consequences or continuing effects of the initial adverse action to revive expired or stale claims would render the filing time periods of whistleblower protection statutes . . . a nullity."[43]

Mehrotra filed his OSHA whistleblower retaliation complaint on December 17, 2020, 276 days after his internal complaint to GE. Accordingly, his blacklisting claim was also untimely.

2. Equitable Estoppel

As a self-represented complainant lacking formal legal expertise, the ALJ provided Mehrotra "with a degree of adjudicative latitude" throughout the ALJ proceedings,[44] and the Board does likewise on this petition. "However, while a self-represented litigant may be held to a lesser standard than that of legal counsel in

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[39] *See Levi v. Anheuser Busch Cos., Inc.*, ARB Nos. 2006-0102, 2007-0020, 2008-0006, ALJ Nos. 2006-SOX-00037, -00108, 2007-SOX-00055, slip op. at 15 (Apr. 30, 2008) (finding Complainant's blacklisting claim untimely because he was "aware of the injury and the facts" when Complainant admitted to pursuing other remedies for his unemployment).

[40] Trans. at 25, 29.

[41] Trans. at 19.

[42] *Johnsen*, ARB 2000-0064, slip op. at 5 (employer's refusal to rehire employee after he was informed he was ineligible for rehire is not a separate discriminatory act); *see also Woods v. Boeing South Carolina*, ARB No. 2013-0035, ALJ No. 2011-AIR-00009, slip op. at 3 (ARB Mar. 20, 2014) (referring to blacklisting as a discreet act).

[43] *Basic v. Spirit AeroSystems*, ARB No. 2009-0015, ALJ No. 2008-AIR-00010, slip op. at 5 (ARB Oct. 21, 2010); *see also Miller*, 755 F.2d at 25 ("a continuing violation may not be based on an employee's having suffered from the effects of an earlier discriminatory act") (citation omitted).

[44] Trans. at 6; *see Martin*, ARB No. 2022-0058, slip op. at 10.

procedural matters, the burden of establishing the basis for equitable modification of a filing deadline is no less."[45] "In other words, as the complaining party, it is Complainant's burden to demonstrate why equitable principles should be applied to toll the limitations period."[46] Having thoroughly reviewed the record below and the parties' briefs on appeal, we agree with the ALJ that Mehrotra failed to establish any situation that would warrant an extension of the filing deadline.

During the hearing, the parties discussed whether Mehrotra was eligible for equitable tolling.[47] Equitable tolling and equitable estoppel are two different and distinct equitable doctrines that this tribunal and courts have applied to modify a filing deadline.[48] "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."[49]

In this case, Mehrotra is not arguing that extraordinary circumstances prevented him from filing. Instead, Mehrotra argues that GE deceived him, and he did not file earlier because he did not think he was being retaliated against.[50] "Equitable estoppel occurs where an employee is aware of his [statutory] rights but does not make a timely filing due to his reasonable reliance on his employer's misleading or confusing representations or conduct."[51] Thus, the inquiry before us is

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[45] *Martin*, ARB No. 2022-0058, slip op. at 10 (citing *Trivedi v. Gen. Elec. and GE Healthcare*, ARB No. 2022-0026, ALJ No. 2022-SOX-00005, slip op. at 7 (ARB Aug. 24, 2022) (citations omitted); *Durham v. Tenn. Valley Auth.*, ARB No. 2006-0038, ALJ No. 2006-CAA-00001, slip op. at 4 (ARB Feb. 27, 2006) (pro se complainants bear "the burden of justifying the application of equitable tolling principles")) (other citations omitted).

[46] *Martin*, ARB No. 2022-0058, slip op. at 10 (citing *Trivedi*, ARB No. 2022-0026, slip op. at 7).

[47] *See generally* Trans. at 8, 13-19, 25-27. The ALJ, and the parties, discussed Mehrotra's arguments as arguments for equitable tolling. As the ARB discussed at length recently in *Martin v. Paragon Foods*, the Board has historically articulated four grounds for extending a filing deadline. *Martin* clarified that while those four grounds apply, they are in fact two different doctrines: equitable tolling and equitable estoppel. In this case, Mehrotra argues for equitable estoppel because he accuses GE of deceiving him. *See Martin*, ARB No. 2022-0058, slip op. at 8.

[48] *Martin*, ARB No. 2022-0058, slip op. at 8 (citations omitted).

[49] *Id.*

[50] Comp. Br. at 18.

[51] *Droog v. Ingersoll-Rand Hussman*, ARB No. 2011-0075, ALJ No. 2011-CER-00001, slip op. at 3 n.6 (ARB Sept. 13, 2012) ("equitable estoppel occurs where an employee is aware of his [statutory] rights but does not make a timely filing due to his reasonable

whether Mehrotra was misled by GE. For the reasons discussed below, we find that Mehrotra is ineligible for equitable estoppel as to both of his claims.

As the Secretary has long-recognized, courts "generally have held that unless the employer has acted deliberately to deceive, mislead or coerce the employee into not filing a claim in a timely manner, equitable estoppel will not apply."[52] This theory "presupposes that the plaintiff has discovered, or, as required by the discovery rule, should have discovered, that the defendant injured him, and denotes efforts by the defendant—beyond the wrongdoing upon which the claim is grounded—to prevent the plaintiff from filing a timely complaint."[53] 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."[54]

First, as to Mehrotra's termination, his own briefing undermines his argument. He states in his brief to the Board, as he did before the ALJ, that at the time he was selected for the RIF, he knew his whistleblowing contributed to his selection.[55] He outlines no other "deception" or circumstance that would support equitable estoppel for his termination. Thus, we find that he failed to establish circumstances warranting an equitable modification of that claim.

Next, as to his blacklisting for rehire claim, Mehrotra contends that his late filing should be excused because GE lied to him about its reasoning for terminating his employment, and because GE hid from him their decision to blacklist him for rehire.[56] Mehrotra argued before the ALJ that because his whistleblowing led to the termination of a senior employee, and he had won an award for his actions, he

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reliance on his employer's misleading or confusing representations or conduct.") (quoting *Kale v. Combined Ins. Co. of America*, 861 F.2d 746, 752 (1st Cir. 1988)).

[52] *Martin*, ARB No. 2022-0058, slip op. at 8 (citing *Woods v. Boeing-South Carolina,* ARB No. 2011-0067, ALJ No. 2011-AIR-00009, slip op. at 9 (ARB Dec. 10, 2012) (citing *Tracy v. Consol. Edison Co.*, No. 1989-CAA-00001, slip op. at 5 (Sec'y July 8, 1992)).

[53] *Martin*, ARB No. 2022-0058, slip op. at 8 (internal citations omitted).

[54] *Id*.

[55] Comp. Br. at 4 ("I suspected that my manager's 4/29/2019 decision to pick me for dismissal under Reduction in Force (RIF) was triggered by his loyalty to the senior executive who was terminated by GE soon after my whistleblower act"). *See also* Comp. Memo of Objections to OSHA Findings at 2 ("As a result of my whistleblower report my supervisor selected me among 3 of 30 people for layoff in the next round of Reduction in Force (RIF). Because I suspected that I may not have been treated fairly in being selected for the RIF, I filed an internal grievance with GE on June 21, 2019.")

[56] Trans. at 18.

thought he was "in the good books of GE."[57] It wasn't until Mehrotra noticed that he was being screened out early from jobs that he assumed he was being blacklisted.[58] This argument fails for legal and factual reasons.

As a legal matter, as discussed above, the limitations period on his blacklisting claim began to run once Mehrotra realized there was something preventing him from getting rehired. The limitations period on that claim did not begin to run when Mehrotra realized that the reason given by GE for not rehiring him might in fact not be the real reason.[59] As "[n]either the statute nor its implementing regulations indicate that a complainant must acquire evidence of retaliatory motive before proceeding with a complaint . . . [complainant's] failure to acquire evidence of . . . motivation for his suspension and firing did not affect his rights or responsibilities for initiating a complaint . . . ."[60] Thus, "a showing of deception as to motive supports equitable estoppel only if it conceals the very fact of discrimination; equitable estoppel is not warranted where an employee is aware of all of the facts constituting discriminatory treatment but lacks direct knowledge of the employer's subjective discriminatory purpose."[61]

Mehrotra does not allege that GE attempted to thwart his filing of a timely whistleblower complaint by improperly inducing, much less coercing, him into foregoing the filing, by for example, promising not to plead the limitations defense.[62] In fact, to the contrary, Mehrotra states it was in GE's best interest *not* to retaliate against him.[63] In June 2019, he knew that he had engaged in protected activity and

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[57] Trans. at 17.

[58] Trans. at 18.

[59] *Martin*, ARB No. 2022-0058, slip op. at 11 (citing *Udofot v. NASA/Goddard Space Ctr.*, ARB No. 2010-0027, ALJ No. 2009-CAA-00007, slip op. at 6 (ARB Dec. 20, 2011) ("the clock does not begin to tick when [complainant] learned of a possible motive for his termination, but rather when he received unequivocal notice of his termination.") (citation omitted).

[60] *Martin*, ARB No. 2022-0058, slip op. at 11 (citing *Halpern v. XL Capital, Ltd.*, ARB No. 2004-0120, ALJ No. 2004-SOX-00054, slip op. at 5 (Aug. 31, 2005).

[61] *Martin*, ARB No. 2022-0058, slip op. at 11 (citation omitted); *accord Coppinger-Martin v. Nordstrom, Inc.,* ARB No. 2007-0067, ALJ No. 2007-SOX-00019, slip op. at 6 (ARB Sept. 25, 2009) (concealing the reason for an adverse employment action does not toll the statute of limitations governing a whistleblower claim, nor does it estop the employer from asserting timeliness as a defense).

[62] *See Martin,* ARB No. 2022-0058, slip op. at 11 (citation omitted).

[63] Comp. Br. at 18 ("[I]t was reasonable for me to believe that senior professionals in the GE Corporate Ombuds office, which has the role of supporting independent directors of the [Board of Directors] in maintaining their scrutiny over GE managers to ensure

that he had been adversely affected regarding the terms of his employment when GE selected him for the RIF.[64] He also had knowledge of his protected activity when he was repeatedly not rehired by GE between June 2019 and March 2020, when he filed his internal complaint.[65] Throughout the ALJ proceedings, Mehrotra argues that he had a good faith belief that GE would do the right thing because it was in the shareholders' and GE's best interests to not retaliate.[66] He also cites accolades he received for reporting the misconduct of his supervisors.[67] Mehrotra claims that he did not know the true reason why GE was not rehiring him until he realized that he was being screened out before reaching the stage of a manager giving input on his application.[68] His own argument, however, focuses on how, starting when he was terminated in 2019, he thought his former direct supervisor might provide negative feedback about his application because of Mehrotra's whistleblowing.[69] That, in and of itself, was sufficient notice for Mehrotra to explore a SOX complaint at that time. In fact, by March 16, 2020, Mehrotra believed that his repeated application rejections were reasons to complain to GE that the company was retaliating against him.[70] That very same reason should also have been enough to alert Mehrotra to his potential cause of action under SOX within the filing deadline, yet he did not file until December 17, 2020. Therefore, application of equitable estoppel is also not warranted for his blacklisting claim. Accordingly, the running of the SOX's filing period is not suspended under equitable estoppel principles.

For all of the reasons cited, we conclude that Mehrotra filed an untimely complaint and failed to establish any situation that would warrant an extension of the filing deadline.

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protection of shareholders, would not itself engage in tort against a whistleblower to help business leaders conceal their failures.")

64 Comp. Br. at 4; *see also* Comp. Memo of Objections to OSHA Findings at 2, 3 ("It was clear to me that my selection […] under RIF was retaliatory.")

65 Comp. Memo of Objections to OSHA Findings at 3 ("I did not seek legal recourse in 2019 after my retaliatory termination, not due to lack of diligence, but because I was confident of getting reinstated based on my innovative contributions. I wanted to avoid returning to a hostile environment that using the legal recourse surely would have engendered.")

66 Trans. at 17; Comp. Br. at 13.

67 Trans. at 17.

68 Trans. at 9-10; Comp. Br. at 17.

69 Comp. Br. at 4, 17 ("I was convinced that my failure to get rehired was due to lack of support by my manager.")

70 Comp. Br. at 4, 5.

CONCLUSION[71]

Accordingly, we **AFFIRM** the ALJ's Decision and Order dismissing the complaint as untimely filed.

SO ORDERED.

IVEY S. WARREN
Administrative Appeals Judge

SUSAN HARTHILL
Chief Administrative Appeals Judge

[71] In any appeal of this Decision and Order that may be filed, we note that the appropriately named party is the Secretary, Department of Labor, not the Administrative Review Board.