

U.S. Department of Labor

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



IN THE MATTER OF:

JOHN COOLEY,

ARB CASE NO. 2025-0005

COMPLAINANT,

ALJ CASE NO. 2024-SOX-00037

ALJ HEATHER C. LESLIE

v.

DATE: January 22, 2025

**MISA IMPORTS INC. and COSTCO
WHOLESALE CORP.,**

RESPONDENTS.

**Before WARREN, Acting Chief Administrative Appeals Judge, and
THOMPSON, Administrative Appeals Judge**

**ORDER GRANTING RECONSIDERATION, VACATING DECISION AND
ORDER DISMISSING PETITION FOR REVIEW, AND REESTABLISHING
BRIEFING SCHEDULE**

PER CURIAM:

This case arises under the employee protection provisions of the Anti-Money Laundering Act¹ and Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act (SOX), as amended, and its implementing regulations.² On September 26, 2024, Administrative Law Judge (ALJ) Heather C. Leslie issued an Order Granting Respondents' Motion to Dismiss, in which she dismissed Complainant John Cooley's complaint against Respondents MISA Imports Inc. and Costco Wholesale Corp. Complainant timely filed exceptions to the ALJ's order with the Administrative Review Board (the Board).

¹ 31 U.S.C. §§ 5323(g), (j).

² 18 U.S.C. § 1514A, as implemented by 29 C.F.R. Part 1980 (2024).

On October 17, 2024, the Board issued a Notice of Appeal Acceptance, Electronic Filing Requirements, and Briefing Order (Briefing Order). Complainant was ordered to file his Opening Brief within twenty-eight (28) days of the date of issuance of the Briefing Order (on or before November 14, 2024). On November 19, 2024, Respondent filed a Response Brief and raised the issue of Complainant's failure to timely file an opening brief.³

Consequently, on November 27, 2024, the Board issued an Order to Show Cause ordering Complainant to explain why the Board should not dismiss the appeal for failing to timely file an opening brief.⁴ The Board cautioned Complainant that if the Board did not receive a response and Opening Brief within ten business days of the order, the Board may dismiss the appeal without further notice.⁵ Complainant did not file a response or an Opening Brief as ordered. As a result, on December 19, 2024, the Board issued a Decision and Order Dismissing the Petition for Review (Dismissal Order).⁶

On December 20, 2024, Complainant filed a Response to Order to Show Cause and Motion to Extend Deadline (Response) and an Opening Brief. In his Response, Complainant, through counsel, acknowledges that he received the Board's orders but the orders were not "brought to the attorney's attention" until December 20.⁷ Complainant also states his counsel "inadvertently missed the email from opposing counsel" regarding Respondent's briefs, and that "it appears that the attorney was not connected to the EFS system and did not receive the notification."⁸ Given that the Response was filed after the Board issued the Dismissal Order, we will treat it as a request for reconsideration.⁹

³ Respondent's Response Brief at 8-9.

⁴ Order to Show Cause.

⁵ *Id.*

⁶ *Cooley v. Misa Imports Inc.*, ARB No. 2025-0005, ALJ No. 2024-SOX-00037 (ARB Dec. 19, 2024).

⁷ Response to Order to Show Cause and Motion to Extend Deadline at 2.

⁸ *Id.*

⁹ See, e.g., *McCloskey v. Ameriquest Mortg. Co.*, ARB No. 2006-0033, ALJ No. 2005-SOX-00093, slip op. at 2 (ARB Mar. 26, 2008) (treating the Complainant's motion requesting that the Board vacate its Order of Remand as a request for reconsideration); *Bidwai v. Bd. Of Educ. of Prince George's Cnty.*, ARB No. 2012-0072, ALJ No. 2011-LCA-00029, slip op. at 2 (ARB Oct. 17, 2012) (treating the complainant's motion to reinstate the complaint and recuse the Board's Administrative Appeals Judges and General Counsel as a request for reconsideration).

Motions for reconsideration must be filed within a “reasonable time” of the date on which the Board issued the decision that a party seeks to have reconsidered.¹⁰ In applying this timeliness requirement, the Board will presume that a motion for reconsideration is timely when it is filed within a short time after the decision it seeks to have reconsidered.¹¹ The Board has held that twelve days or less qualifies as a short time.¹² Accordingly, as Complainant’s motion for reconsideration was filed one day after our Dismissal Order, we find that it satisfies this threshold requirement.

The Board will reconsider a decision and order only under limited circumstances, which include whether the movant has demonstrated: (i) material differences in fact or law from those presented to the Board of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the Board’s decision, (iii) a change in the law after the Board’s decision, or (iv) failure to consider material facts presented to the Board before its decision.¹³ Importantly, the Board has repeatedly stated that the foregoing circumstances “are not exclusive, and a complainant’s inability to satisfy one is not necessarily fatal to a reconsideration motion.”¹⁴

The circumstances presented in this case justify granting reconsideration and proceeding with this appeal. Although the Board’s orders were sent to Complainant via certified mail, Complainant has averred that they were not brought to counsel’s attention. We further note Complainant’s commitment to addressing the personnel issues that caused his failure to comply with the Board’s deadlines. Given the circumstances of this case, we find that granting reconsideration is appropriate in order to allow Complainant to proceed with his appeal.

¹⁰ *Klein v. Bank of Am.*, ARB No. 2022-0016, ALJ No. 2020-SOX-00039, slip op. at 2 (ARB May 19, 2022) (citing *Henrich v. Ecolab, Inc.*, ARB No. 2005-0030, ALJ No. 2004-SOX-00051, slip op. at 11 (ARB May 30, 2007)).

¹¹ *Id.* (quoting *Henrich*, ARB No. 2005-0030, slip op. at 15).

¹² *Henrich*, ARB No. 2005-0030, slip op. at 17 (“With one exception, the Board and its predecessors have characterized as ‘short’ only time periods of twelve days or less. It is possible that the Board would consider as short a period of 14 or even 30 days. But we need not decide the outer limit of a short time in order to conclude that 60 days is not, within our understanding of that term, short.”).

¹³ *Kossen v. Empire Airlines*, ARB No. 2022-0004, ALJ No. 2019-AIR-00022, slip op. at 2 (ARB July 19, 2023).

¹⁴ *McDowell v. Eagle Intermodal, Inc.*, ARB No. 2022-0046, ALJ No. 2020-STA-00054, slip op. at 3 (ARB Feb. 14, 2023) (citing *Fernandez v. SAP Am. Inc.*, ARB No. 2022-0033, ALJ No. 2022-LCA-00005, slip op. at 2 (ARB July 5, 2022) (Order Denying Reconsideration)).

Complainant is reminded that the Board has the authority to issue sanctions, including dismissal, for a party's failure to comply with the Board's orders and any future failure to comply with the Board's orders may result in such sanctions.¹⁵ To ensure compliance with future deadlines and orders, Complainant is directed to familiarize himself with the ARB's Rules of Practice and Procedure, 29 C.F.R. Part 26, available at <https://www.dol.gov/agencies/arb/resources/rules> and urged to register for electronic filing and service through the ARB's Electronic Filing System (EFS) available at https://www.dol.gov/agencies/arb/arb_efile. Complainant's registration and participation in the EFS system will help prevent any future issues regarding receipt of the Board's orders.

Accordingly, we **GRANT** Complainant's Request for Reconsideration, **VACATE** the Board's December 19, 2024 Decision and Order Dismissing Petition for Review, and reestablish the Briefing Schedule as set forth below.

BRIEFING REQUIREMENTS

A. Briefing Schedule

- **Response Brief:** Within 28 calendar days of the date of this Order, Respondent may file with the Board a Response Brief in opposition to the Opening Brief. The Response Brief may not exceed 50 double-spaced pages.
- **Reply Brief:** Within 14 calendar days from the date of service of a Response Brief, the petitioner may file with the Board a Reply Brief. The Reply Brief may not exceed 20 double-spaced pages.

No additional briefs may be filed without the prior written permission of the Board, issued by Order.

B. Motions and Responses

All motions and other requests for extraordinary action by the Board including, but not limited to, requests for extensions of time or to exceed page limitations, shall be in the form of a motion. Motions and responses to motions may not exceed 30 double-spaced pages.

¹⁵ *Knibb v. N.J. Transit Rail Ops., Inc.*, ARB No. 2023-0011, ALJ No. 2020-FRS-00078, slip op. at 4 (ARB Feb. 3, 2023) (citation omitted).

C. Appendix and Exhibit Filings

The Board already possesses the entire record. It is not allowed for any party to file the entire record as an appendix or exhibit. Parties are only permitted to file an appendix containing specific cited portions of the record relied upon in a party's accompanying filing.

Any filed appendix shall consist only of well-labeled excerpts from the record that are directly cited in the brief, motion or other filing accompanying the appendix. Parties may not include in an appendix any evidence not already contained in the record, without prior written permission granted by Board order.

Parties seeking to file new evidence must file a motion with the Board with supporting argument. The Board retains the authority to reject any appendix or exhibit filings that do not meet these requirements.

D. Page Limitations

The page limitations set forth in this Order do not include cover pages, tables of contents, tables of citations, signature blocks, or certificates of service. A motion to exceed an identified page limitation must specify why additional pages are required. Such motions will not be granted except in extraordinary circumstances.

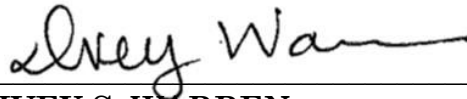
If a brief or motion is filed without approval that exceeds the stated page limitations, the Board may, with or without notice: (1) refuse to accept the filing; (2) strike the filing with leave to refile a compliant filing within a specified time; (3) disregard the pages of the filing that exceed the page limitation; or (4) issue any other appropriate order, including the issuance of sanctions.

E. Required Format:

All pleadings, briefs, and motions must comply with the following requirements:

- 12-point, 10 character-per-inch type or larger font
- Double-spaced
- Minimum of one-inch margins
- Capable of being printed on 8.5- by 11-inch paper

SO ORDERED.

A handwritten signature in cursive script, reading "Ivey Warren", written in black ink.

IVEY S. WARREN

Acting Chief Administrative Appeals Judge

A handwritten signature in cursive script, reading "Angela W. Thompson", written in black ink.

ANGELA W. THOMPSON

Administrative Appeals Judge