



IN THE MATTER OF:

JEFFREY WALKER,

ARB CASE NO. 2025-0029

COMPLAINANT,

ALJ CASE NO. 2024-SOX-00043

ALJ DANA ROSEN

v.

DATE: September 30, 2025

**TRANSPORT REFRIGERATION
SERVICES,**

RESPONDENT.

Appearances:

For the Complainant:

Jeffrey Walker; *Pro Se*; Gibsonville, North Carolina

For the Respondent:

**Kelvin L. Newsome, Esq. and Michael D. Pierce, Esq.; *O'Hagan Meyer
PLLC*; Richmond, Virginia**

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

DECISION AND ORDER OF REMAND

This complaint arises under Section 806 of the Sarbanes-Oxley Act (SOX or Act), as amended, and its implementing regulations.¹ Complainant Jeffrey Walker filed a complaint with the Occupational Safety and Health Administration (OSHA) on April 2, 2024, claiming he was retaliated against when he threatened to report his employer, Respondent Transport Refrigeration Services, for reporting false inventory data to Walmart. OSHA determined there was no reasonable cause that Respondent violated the SOX in terminating Complainant's employment.

¹ 18 U.S.C. § 1514A; 29 C.F.R. Part 1980 (2025).

Complainant requested a hearing with an Administrative Law Judge (ALJ). The ALJ assigned to the case issued an Order to Show Cause Why This Matter Should Not Be Dismissed for Lack of Jurisdiction (OSC) on September 9, 2024, directing the parties to demonstrate why the matter falls within the provisions of SOX. The ALJ wrote as follows:

A reading of the statute shows that the Sarbanes Oxley Act, or SOX, was created for banking and financial institutions. It is unclear how this complaint falls under the jurisdiction of the Sarbanes Oxley Act. . . .

Complainant shall show cause why this matter should not be dismissed as falling outside the provisions of SOX, and why his Complaint should not be dismissed per the findings of the Administrator and the law.^[2]

Complainant, pro se, was not given any further instructions as to procedure or how to respond. The ALJ's OSC appears to be based on subject-matter jurisdiction as the title reads "Order to Show Cause Why This Matter Should Not Be Dismissed for Lack of Jurisdiction." The OSC references OSHA's (Administrator) determination and applicable law. OSHA had concluded that both parties were covered by SOX, but it was unable to conclude that reasonable cause showed Respondent violated the SOX.³

Both parties responded to the ALJ's OSC. Complainant responded first, followed by Respondent. In his response, Complainant repeated the merits of his claim. Respondent answered that it is not a publicly traded company. Further, even if it were covered, Respondent argued Complainant failed to allege a prima facie case of retaliation, and the ALJ should dismiss on those grounds as well.

On November 15, 2024, the ALJ dismissed the claim with prejudice for "lack of jurisdiction."⁴ The ALJ wrote as follows:

² Order to Show Cause (ALJ Sept. 9, 2024).

³ OSHA's June 18, 2024 Determination.

⁴ Order Dismissing Complaint with Prejudice (ALJ Nov. 15, 2024).

Based on a review of the Sarbanes Oxley Act, the pleadings filed by Complainant and Respondent, the court has no jurisdiction under SOX in this matter.

Without addressing the merits of this complaint, Sarbanes Oxley Act does not provide jurisdiction for a complaint filed against a company that is not a publicly traded company. Both Complainant and Respondent agree that Respondent Transport Refrigeration Services is not a publicly traded company.^[5]

Complainant filed a request for reconsideration, which the ALJ denied on December 30, 2024.⁶ Complainant appealed the ALJ's decision to the Administrative Review Board (ARB or Board). For the reasons below, we remand.

DISCUSSION

The Secretary of Labor has delegated authority to the ARB to hear appeals from ALJ decisions and issue agency decisions in cases arising under SOX.⁷ In reviewing the ALJ's conclusions of law, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making the initial decision"⁸ Accordingly, the Board reviews an ALJ's conclusions of law in the dismissal order de novo.

Section 806 of SOX protects employees who provide information to a covered employer regarding conduct that the employee reasonably believes constitutes a violation of 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire, radio, TV fraud), 1344 (bank fraud), or 1348 (securities fraud), or any rule or regulation of the SEC (including regulations governing financial statements), or any provision of Federal law relating to fraud against shareholders.⁹

⁵ *Id.* at 3.

⁶ Order Denying Complainant's Motion for Reconsideration (ALJ Dec. 30, 2024).

⁷ Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13,186 (Mar. 6, 2020); 29 C.F.R. § 1980.110(a).

⁸ 5 U.S.C. § 557(b).

⁹ 18 U.S.C. § 1514A.

To prevail under the SOX, a complainant must first establish by a preponderance of the evidence that: (1) they engaged in activity or conduct that SOX protects; (2) the respondent took unfavorable personnel action against them; and (3) the protected activity was a contributing factor in the adverse personnel action. If the complainant prevails, the respondent can nonetheless avoid relief if it can show by clear and convincing evidence that it would have taken the same action in the absence of protected activity.¹⁰

As noted above, the ALJ dismissed on grounds of “lack of jurisdiction.” For the reasons set out below, we conclude the ALJ erred.

We begin with a short summary of the strain between the more serious dismissal for lack of subject-matter jurisdiction and those more mundane dismissals for failure to state a claim.¹¹ Because of a judicial history of haphazardly using “jurisdiction” language in dismissal orders, courts often conflate the issue of subject-matter jurisdiction and ordinary claim-processing rules.¹² Reigning in against the overuse of “jurisdictional” language, the Supreme Court in more recent times has instructed courts to look for a clear statement in the statute’s “text, context, and relevant historical treatment” to render a statutory condition jurisdictional.¹³ Absent a clear indication that Congress intended to enhance a condition with jurisdictional significance, courts will “treat the restriction as non-jurisdictional in character.”¹⁴

With these clarifications in place, quite often the matter at issue in motions to dismiss are non-jurisdictional elements for the court to process the claim on the merits rather than on the court’s power to hear the case or subject-matter

¹⁰ 49 U.S.C. § 42121; *see also* 18 U.S.C. § 1514A(b)(2).

¹¹ We discuss federal case law following Federal Rules of Civil Procedure 12(b)(1) for dismissals for lack of jurisdiction and 12(b)(6) for dismissals for failure to plead a claim. The corresponding ALJ rules on dismissals are found at 29 C.F.R. § 18.70.

¹² *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011); *see also Kontrick v. Ryan*, 540 U.S. 443, 454 (2004) (labeling “jurisdiction” as “a word of many, too many, meanings”) (citation omitted).

¹³ *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 166 (2010).

¹⁴ *Sebelius v. Auburn Reg’l Med. Ctr.*, 568 U.S. 145, 153-54 (2013).

jurisdiction.¹⁵ Numerous statutory conditions such as filing deadlines¹⁶ and statutory coverage-of-parties requirements¹⁷ are non-jurisdictional.¹⁸ Courts deem these conditions non-jurisdictional because they are not clothed in jurisdiction-granting language or they do not attach a jurisdictional consequence to the condition's satisfaction.¹⁹ Rather, the conditions are elements going to the merits of a successful claim.

In the case at hand, the ALJ dismissed on the grounds that the Department of Labor does not have jurisdiction of the complaint as it was outside the provisions of SOX. We conclude the ALJ erred. Subject-matter jurisdiction of 18 U.S.C. 1514A is with the Department of Labor. Congress assigned the matter to the Secretary of Labor for enforcement.²⁰ The Secretary promulgated enforcement procedures for parties to follow, including an option for a hearing before an ALJ.²¹ Thus, the ALJ properly had subject-matter jurisdiction to adjudicate Complainant's appeal.

¹⁵ Richard Murphy, *Determining Whether a Statutory Limit is "Jurisdictional,"* 33 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 8316 (2d ed. 2025); Arthur R. Miller & A. Benjamin Spencer, 5B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 1350 nn. 35-37 (4th ed. 2025).

¹⁶ Most filing deadlines Congress establishes are non-jurisdictional. "[W]e have repeatedly held that filing deadlines ordinarily are not jurisdictional; indeed, we have described them as 'quintessential claim-processing rules.'" *Auburn Reg'l Med. Ctr.*, 568 U.S. at 154 (citation omitted); *Guerra v. Consol. Rail Corp.*, 936 F.3d 124, 132-34 (3d Cir. 2019). Congress is free, however, to attach jurisdictional language to such requirements and might defer to long-standing rulings of the Supreme Court deeming the matter jurisdictional, which were then followed by Congress in subsequent enactments. *Henderson*, 562 U.S. at 435-36.

¹⁷ *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 503-04 (2006) (Title VII's fifteen-employee requirement is not jurisdictional); *Fort Bend Cnty., Texas v. Davis*, 587 U.S. 541, 548 (2019) (listing numerous examples of non-jurisdictional claim-processing conditions).

¹⁸ *See Moreb v. Kerry, Inc.*, ARB No. 2023-0048, ALJ No. 2023-FDA-00014, slip op. at 3 (ARB Dec. 14, 2023).

¹⁹ *Gonzalez v. Thaler*, 565 U.S. 134, 140 (2012) (construing a statute's language as jurisdictional where it provides that "(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals . . ."); *Hampton v. Pac. Inv. Mgmt. Co. LLC*, 869 F.3d 844, 847 (9th Cir. 2017) (citing a circuit split and siding with the Third Circuit as to whether language in Securities Litigation Uniform Standards Act (SLUSA) is jurisdictional where it provides "[n]o covered class action . . . may be maintained in any State or Federal court" if it meets the statute's various requirements).

²⁰ 18 U.S.C. 1514A(b).

²¹ 29 C.F.R. § 1980.106.

Instead, the proper subject of the ALJ's OSC concerns whether Respondent is a covered person or employer²² and Complainant is a covered employee²³ under the SOX. This question of coverage under SOX is properly a claim-processing rule and not a question of subject-matter jurisdiction.²⁴ SOX's language itself, as amended, extends to subsidiaries, officers, employees, contractors, subcontractors, and agents of public companies. The United States Supreme Court in *Lawson v. FMR LLC* concluded that employees of contractors may be covered employees under SOX.²⁵

²² 29 C.F.R. § 1980.101(f):

(f) Covered person means any company, including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company, or any nationally recognized statistical rating organization, or any officer, employee, contractor, subcontractor, or agent of such company or nationally recognized statistical rating organization.

²³ 29 C.F.R. § 1980.101(g):

(g) Employee means an individual presently or formerly working for a covered person, an individual applying to work for a covered person, or an individual whose employment could be affected by a covered person.

²⁴ *Cf. Arbaugh*, 546 U.S. at 503-04 (Title VII's condition extending coverage to employers with fifteen employees is a claim-processing condition not a jurisdictional condition); *Kology v. My Space NYC Corp.*, 177 F. Supp. 3d 778, 780 (E.D.N.Y. 2016) (same).

²⁵ 571 U.S. 429 (2014); *see also Spinner v. David Landau & Assocs., LLC*, ARB Nos. 2010-0111, -0115, ALJ No. 2010-SOX-00029, slip op. at 5 (ARB May 31, 2012).

CONCLUSION

Because the ALJ erred in dismissing the claim for lack of jurisdiction, we **VACATE** the ALJ's Order and **REMAND** the matter back to the ALJ for further proceedings consistent with this Order.

SO ORDERED.

THOMAS H. BURRELL
Administrative Appeals Judge

RANDEL K. JOHNSON
Chief Administrative Appeals Judge