U.S. Department of Labor Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

IN THE MATTER OF:

LUIS HORATIO ARIAS,

COMPLAINANT,

v.

NICE ACTIMIZE, LTD.,

RESPONDENT.

ARB CASE NO. 2025-0060

ALJ CASE NO. 2024-SOX-00032
ALJ JOHN P. SELLERS, III

DATE: March 23, 2026

Appearances:

For the Complainant:
Luis Horatio Arias; *Pro Se*; La Paz, Bolivia

For the Respondent:
Travis R. Kearbey, Esq.; *Quarles & Brady LLP*; Clayton, Missouri

Before KAPLAN and KIKO, Administrative Appeals Judges

DECISION AND ORDER

This case arises under the whistleblower protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act (SOX or Act), as amended, and its implementing regulations.[1] Complainant Luis Horatio Arias filed a complaint with the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Respondent NICE Actimize, LTD.[2] unlawfully retaliated against him for engaging

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

[2] As per the Administrative Review Board's (ARB or Board) Notice of Appeal Acceptance, Electronic Filing Requirements, and Briefing Order (Briefing Order):

> When filing his complaint, the Complainant identified the respondent as NICE Actimize, Ltd. However, no such entity

in protected activity. On April 30, 2025, a United States Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order Granting Respondent's Motion for Summary Judgment (Order Granting Summary Judgment). Complainant petitioned the Board for review of the ALJ's Order Granting Summary Judgment. For the following reasons, we affirm.

BACKGROUND

Complainant is a Bolivian citizen and resides in Bolivia.[3] Complainant is employed by InContact Boliva, a company that provides commercial services to Respondent.[4] Between March 2022 and March 2023, Complainant raised several concerns to supervisors and management about "irregular sales practices, product capabilities, misrepresentations, and compliance issues."[5]

In March 2023, Respondent placed Complainant on a Performance Improvement Plan (PIP).[6] Then, in April 2023, Respondent terminated Complainant's employment.[7] Following his employment termination, Complainant pursued a claim against InContact Bolivia before foreign tribunals.[8] On October 6, 2023, a Bolivian court issued a reinstatement order.[9]

On March 14, 2024, approximately eleven months after his termination, Complainant filed an OSHA complaint against Respondent alleging that "he received a negative performance evaluation and was terminated during April 2023."[10] On April 4, 2024, OSHA issued Secretary's Findings and dismissed the

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> exists. The Complainant was employed in Bolivia by InContact Bolivia. That entity contracts with Actimize, Inc., which is a U.S. based corporation. The parent company of Actimize, Inc. is an Israeli entity named NICE LTD. The Respondent's counsel represents Actimize, Inc.

Briefing Order at 1 (internal citations omitted).

3 Order Granting Summary Judgment at 2.

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.* at 3.

8 *See* Complainant's Opposition to Respondent's Motion for Summary Judgment at 4.

9 *See id.* at 5; Opening Brief of Complainant Luis H. Arias (Comp. Br.) at 3-4. Complainant returned to work on September 27, 2024. Complainant's Opposition to Respondent's Motion for Summary Judgment, Exhibit (Ex.) B (Reinstatement Memo).

10 Secretary's Findings at 1; *see* Order Granting Summary Judgment at 3.

complaint as untimely.[11] Complainant filed objections to the Secretary's Findings and requested a hearing before the Office of Administrative Law Judges (OALJ).[12]

Before the OALJ, Respondent filed a Motion for Summary Judgment arguing, among other things, that Complainant's OSHA complaint was untimely filed.[13] Complainant filed a response in opposition to Respondent's motion, asserting that the claim was timely as circumstances warranted equitable tolling.[14] On April 30, 2025, the ALJ granted Respondent's Motion for Summary Judgment. On May 14, 2025, Complainant timely filed a Petition for Review with the Board.

On May 16, 2025, the Board accepted the appeal and issued a Briefing Order. Before the Board, the parties filed several submissions, including: (1) Complainant's Motion for Leave to Submit New Evidence; (2) Complainant's Opening Brief of Complainant Luis H. Arias; (3) Respondent's Opposition to Complainant's Motion for Leave to Submit New Evidence; (4) Respondent's Brief in Response to Complainant's Opening Brief; and (5) Complainant's Reply Brief to Respondent's Response Brief. The Board issued an Order (August 14, 2025 Order) directing additional briefing from the parties.[15] In response, Complainant filed Complainant's Brief Pursuant to August 14, 2025 Order, and Respondent filed Respondent's Response to Complainant's Brief in Response to August 14, 2025, Order. After thoroughly examining the parties' arguments and the record, the Board affirms the ALJ's Order Granting Summary Judgment.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated the Board the authority to hear appeals from ALJ decisions and issue agency decisions under SOX.[16] The Board reviews an

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[11] Order Granting Summary Judgment at 2.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] In Respondent's Opposition to Complainant's Motion for Leave to Submit New Evidence, Respondent requested that the Board decline to consider Complainant's Opening Brief because it was filed four days after the briefing deadline. The Board denied Respondent's request. August 14, 2025 Order at 3.

[16] 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); 29 C.F.R. § 1980.110(a).

ALJ's grant of summary decision de novo under the same standard the ALJ applies.[17] This includes pre-hearing dismissals based on timeliness.[18]

DISCUSSION

1. New Evidence on Appeal

As set forth above, on June 16, 2025, Complainant filed a Motion for Leave to Submit New Evidence, requesting that the Board reopen the record to accept new evidence not submitted to the ALJ below.[19] Specifically, Complainant identified three exhibits that he seeks to introduce on appeal: (1) Exhibit ARB-2, "April 2023 Termination Memo;" (2) Exhibit ARB-3, "June 2023 Simulated Reinstatement Memo;" and (3) Exhibit ARB-4, "June 2023 Second Termination Memo."[20] Complainant stated that these exhibits are relevant to "[e]stablishing the timeliness" of his OSHA complaint, "[d]ocumenting adverse actions and employer misconduct," and "[s]upporting the pattern of retaliation relevant to equitable tolling."[21] Respondent opposed Complainant's motion.

On August 14, 2025, the Board issued an Order acknowledging the motion, advising the parties that it does not generally receive or consider evidence submitted for the first time on appeal, setting forth the applicable standard of review, and directing the parties to submit briefing on this issue.[22]

The parties timely filed additional briefing on this issue. Complainant argues that: (1) he mischaracterized the exhibits as "new evidence" as they were disclosed in initial disclosures, preserved during discovery, and intended for hearing;[23] (2) the record was never formally closed under 29 C.F.R. § 18.90(a) because no hearing occurred and no waiver was filed;[24] and (3) the exhibits meet the Board's four-factor test to accept and consider new evidence on appeal.[25] Conversely, Respondent

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17 *Neff v. Keybank Nat'l Assoc.*, ARB No. 2019-0035, ALJ No. 2018-SOX-00013, slip op. at 3 (ARB Feb. 5, 2020).

18 *Lugg v. Lear Corp.*, ARB No. 2022-0008, ALJ No. 2021-SOX-00022, slip op. at 3 (ARB May 19, 2022) (citation omitted).

19 Complainant's Motion for Leave to Submit New Evidence at 1.

20 *Id.* at 2.

21 *Id.* at 1.

22 August 14, 2025 Order at 2.

23 Complainant's Brief Pursuant to August 14, 2025 Order at 1-2.

24 *Id.*

25 *Id.* at 3-4.

contends that: (1) Complainant's three exhibits are "new evidence" because they were never submitted on the record before the ALJ or referenced to in the parties' briefing of Respondent's Motion for Summary Judgment;[26] (2) the ARB has consistently refused to consider documentation not before an ALJ;[27] and (3) Complainant fails to establish the factors necessary to admit new evidence.[28] The Board agrees with Respondent.

The Board does not generally consider evidence submitted for the first time on appeal.[29] When determining whether to consider new evidence, the Board relies on the standard contained in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (OALJ's Rules of Practice and Procedure),[30] which provides that "[n]o additional evidence may be admitted unless the offering party shows that new and material evidence has become available that could not have been discovered with reasonable diligence before the record closed."[31] Under this standard, the moving party must show: "(1) the evidence was discovered after [the record closed]; (2) due diligence was exercised to discover the evidence; (3) the evidence is material and not merely cumulative or impeaching; and (4) the evidence is such that a new trial would probably produce a different result."[32]

The Board considers these three exhibits as new evidence on appeal as they were not referenced in Complainant's filings in opposition to Respondent's motion or considered by the ALJ.[33] Additionally, Complainant fails to demonstrate that the new evidence meets the four factors identified above. While the evidence Complainant seeks to introduce on appeal is not merely cumulative or impeaching, it is apparent that these exhibits could have been discovered with reasonable

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[26] Respondent's Response to Complainant's Brief in Response to August 14, 2025, Order at 3.

[27] *Id.* at 3-4.

[28] *Id.* at 4-5.

[29] *Xanthopoulos v. Mercer Inv. Consulting*, ARB No. 2022-0032, ALJ No. 2021-SOX-00017, slip op. at 11 (ARB Sept. 28, 2023) (citing *Smith v. Franciscan Physician Network*, ARB No. 2022-0065, ALJ No. 2020-ACA-00004, slip op. at 6 (ARB June 29, 2023)).

[30] *Id.* (citing *Smith*, ARB No. 2022-0065, slip op. at 6).

[31] 29 C.F.R. § 18.90(b)(1).

[32] *Boyd v. City of Chelsea*, ARB No. 2024-0029, ALJ No. 2023-ACA-00001, slip op. at 8 (ARB Feb. 27, 2026) (citing *Kossen v. Empire Airlines*, ARB No. 2022-0004, ALJ No. 2019-AIR-00022, slip op. at 11 (ARB June 13, 2023)).

[33] *See Aityahia v. Air Line Pilots Ass'n*, ARB No. 2019-0037, ALJ No. 2018-AIR-00042, slip op. at 3 n.2 (ARB May 19, 2020) (considering evidence not submitted to the ALJ is new evidence on appeal).

diligence and were readily available prior to the closing of the record below. Admittedly, all three exhibits were in Complainant's possession as of June 9, 2023, well before the start of the OALJ proceedings.[34] Complainant even states that he strategically chose to "preserve[] them for hearing."[35]

Moreover, even if the Board were to accept and consider this evidence, these exhibits would not produce a different result on the issue of timeliness. The three exhibits memorialize alleged adverse actions taken against Complainant outside of the 180-day statutory filing period. For example, Exhibit ARB-4, "June 2023 Second Termination Memo," is dated June 9, 2023, and purports to reflect a new and most recent alleged adverse action taken against Complainant.[36] Thus, even if the Board were to accept and consider the June 2023 Second Termination Memo, Complainant's OSHA complaint would still be untimely, as it would have needed to have been filed by December 6, 2023. Alternatively, if the June 2023 Second Termination Memo was introduced and considered for the sole purpose of demonstrating a retaliatory pattern extending beyond the initial April 2023 termination, Complainant has not explained how this newly alleged retaliation prevented him from timely filing his OSHA complaint. As of June 2023, Complainant still had approximately four months to file his OSHA complaint following the April 2023 termination.

Accordingly, the Board disregards the new evidence presented on appeal.

2. Order Granting Summary Judgment and Timeliness of OSHA Complaint

A. Summary Decision Standard

Summary decision is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law."[37] In considering a motion for summary decision, the Board views the evidence and makes all reasonable inferences in the light most favorable to the non-moving party.[38] If the moving party demonstrates an absence of evidence supporting the non-moving party's position, the burden shifts to the non-moving party to establish the existence of a genuine issue of material fact that could affect the outcome of

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[34] Complainant's Brief Pursuant to August 14, 2025 Order at 3.

[35] *Id.* at 3.

[36] Generally, the Board does not consider new arguments raised for the first time on appeal, particularly new causes of action. *See Boyd*, ARB No. 2024-0029, slip op. at 7 (disregarding the complainant's new protected activity claim on appeal).

[37] 29 C.F.R. § 18.72(a).

[38] *Neff*, ARB No. 2019-0035, slip op. at 3 (citation omitted).

litigation.[39] The non-moving party may not rest upon mere allegations, speculation, or denials, but must instead set forth specific facts on each issue upon which the non-moving party would bear the ultimate burden of proof.[40] If the non-moving party fails to show an essential element to their case, there can be no "genuine issue as to any material fact," since a complete failure of proof concerning an essential element necessarily renders all other facts immaterial.[41]

B. Complainant's OSHA Complaint was Untimely

SOX provides that a covered employer may not discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because the employee engaged in activities protected under the Act.[42] Any employee who believes he has been discharged or otherwise discriminated against in violation of SOX must file a complaint with the Secretary of Labor "not later than 180 days after the date on which the violation [of SOX] occurs, or after the date on which the employee became aware of the violation."[43]

Before the ALJ, Respondent moved for summary judgment arguing, among other things, that Complainant's OSHA complaint was untimely filed because it was filed on March 14, 2024, more than 180 days after his placement on a PIP in March 2023 and his employment termination in April 2023.[44] Complainant did not dispute these dates, and therefore, the ALJ concluded that the complaint was facially untimely.[45]

On appeal, Complainant argues that the ALJ erred in limiting his review to the March 2023 PIP and April 2023 termination by disregarding adverse actions and retaliation that occurred thereafter.[46] Specifically, Complainant contends that the ALJ should have recognized "for the purposes of timeliness and equitable tolling, that the appropriate cutoff should be **October 6, 2023**, the date of the final Bolivian court reinstatement order, which represents the last adverse action

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39 *Feldman v. Risk Placement Servs.*, ARB No. 2020-0068, ALJ No. 2019-SOX-00052, slip op. at (ARB Sept. 29, 2021) (citation omitted).

40 *Id.*

41 *Id.*

42 18 U.S.C. § 1514A(a)(1)-(2).

43 *Id.* § 1514A(b)(2)(D); *see* 29 C.F.R. § 1980.103(d).

44 Order Granting Summary Judgment at 4.

45 *Id.*

46 Comp. Br. at 3-4.

directly tied to the original retaliation claim[,]" and that the ALJ misapplied Department of Labor (DOL) precedent in his analysis.[47] The Board disagrees.

i. Respondent's non-compliance with the Bolivian court's reinstatement order was a new argument raised for the first time on appeal

Although the Board "construes arguments for self-represented litigants liberally in deference to their lack of training in the law," we also have a duty not to become an advocate for a pro se litigant.[48] The Board has carefully reviewed Complainant's filings under this liberal standard and finds that they raise a new adverse action claim for the first time on appeal. Before the ALJ, Complainant's sole argument pertaining to the reinstatement order was that "[it] constitutes new evidence confirming wrongful termination and retaliation[,]" which supports equitable tolling under these circumstances.[49] Yet, on appeal, Complainant attempts to repackage this tolling argument into a new adverse action claim—contending that Respondent's alleged non-compliance with the reinstatement order should be treated as its own adverse action such that his claim should be considered timely.[50] Under the Board's well-established precedent, it declines to consider arguments that a party raises for the first time on appeal.[51]

ii. The Bolivian court reinstatement order is not an adverse action under SOX

The Board also recognizes the parties' brief discussion as to whether the Bolivian court reinstatement order constitutes an adverse action under SOX.[52] A reinstatement order does not constitute an adverse action. Under SOX, an adverse action must be taken by a covered employer, "or any officer, employee, contractor, subcontractor, or agent of such company or nationally recognized statistical rating organization."[53] A foreign tribunal does not fall within this definition or otherwise qualify as a covered entity under the Act. Additionally, the reinstatement order itself was not an "adverse action." The Board has explained that an adverse action is "simply something unfavorable to an employee, not necessarily unfair, retaliatory

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47 *Id.*

48 *Williams v. QVC, Inc.*, ARB No. 2020-0019, ALJ No. 2018-SOX-00019, slip op. at 7 n.43 (ARB Jan. 17, 2023) (citation omitted).

49 Complainant's Opposition to Respondent's Motion for Summary Judgment at 5.

50 Comp. Br. at 4.

51 *Supra* note 36.

52 Respondent's Brief in Response to Complainant's Opening Brief at 10; Complainant's Reply Brief to Respondent's Response Brief at 3-4.

53 18 U.S.C. § 1514A(a).

or illegal. [It] is more than trivial when it is materially adverse as to dissuad[e] a reasonable worker from protected activity."[54] Here, the reinstatement order was a remedial measure issued by a foreign tribunal in response to a separate legal proceeding; it was not an unfavorable action taken by Respondent.

iii. Complainant did not provide Respondent with adequate notice of post-reinstatement harassment allegations, and they are materially different than the violations set forth in the OSHA complaint

The ALJ did not misinterpret DOL precedent. Before the ALJ, and in response to Respondent's Motion for Summary Judgment, Complainant introduced a new theory not in the original OSHA complaint alleging that post-reinstatement, he filed complaints "detailing over 50 incidents of [] harassment. These incidents include a hostile work environment, attempts to undermine his professional contributions, and efforts to fabricate a breach of contract to justify further termination."[55] The ALJ declined to consider Complainant's post-reinstatement harassment allegations because of due process concerns.[56] The ALJ cited *Kingoff v. Maxim Group, LLC*[57] and *Sasse v. Office of the U.S. Attorney, U.S. Department of Justice*,[58] in support of his reasoning, emphasizing that due process requires a complaint to provide fair notice of alleged violations.[59]

On appeal, Complainant attempts to distinguish the late introduction of unrelated claims in *Kingoff* and *Sasse* from the present case by asserting that his claims of post-reinstatement harassment were introduced through "timely procedural filings" and related to the April 2023 termination.[60] However, the record reflects that Complainant first introduced these new allegations only after Respondent moved for summary judgment. Prior to that filing and during the discovery process, Complainant admitted that all alleged retaliatory actions occurred during or before April 2023.[61] At no point during the OALJ proceedings did Complainant move to amend his OSHA complaint to provide Respondent with

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54 *Petitt v. Delta Airlines, Inc.*, ARB No. 2021-0014, ALJ No. 2018-AIR-00041, slip op. at 14 (ARB Mar. 29, 2022) (citations and internal quotations omitted).

55 Complainant's Opposition to Respondent's Motion for Summary Decision at 4.

56 Order Granting Summary Judgment at 6-7.

57 *Kingoff v. Maxim Grp. LLC*, ALJ No. 2004-SOX-00057 (ALJ July 21, 2004).

58 *Sasse v. Off. of the U.S. Att'y, U.S. Dep't of Just.*, ARB No. 2022-0077, ALJ No. 1998-CAA-00007 (ARB Jan. 30, 2004).

59 Order Granting Summary Judgment at 6.

60 Comp. Br. at 4.

61 Respondent's Motion for Summary Judgment, Ex. 3 at 13-14 (Requests for Admission).

adequate notice of additional alleged adverse actions arising after his reinstatement or that a new claim for relief was being raised.[62]

Moreover, the Board agrees with the ALJ that the nature of these allegations arise wholly apart from, and constitute materially different SOX violations than, those set forth in the OSHA complaint (a PIP and termination in 2023). As highlighted above, Complainant describes concerns of a hostile work environment. Additionally, in a supplemental filing in response to Respondent's Motion for Summary Judgment, Complainant alleged "[c]urrent harassment following ***renewed*** protected activities." This assertion thereby implies distinct, new protected acts and a different form of retaliation post-reinstatement.[63] This assertion, even when considered together with the allegations raised in Complainant's Opposition to Respondent's Motion for Summary Judgment, lacks specific factual allegations or evidence sufficient to discern a cogent argument linking it to the initial complaint. The recourse for any new, post-reinstatement protected activity and/or SOX violation lies, if at all, in filing a new complaint. Accordingly, the limitations period began when Complainant was placed on the PIP in March 2023 and was subsequently terminated in April 2023, rendering his OSHA complaint untimely.[64]

C. Complainant's Other Arguments Do Not Justify Equitable Tolling

Although a SOX complaint must be filed no later than 180 days after the date of the alleged violation of the Act or after the date on which the employee became aware of the violation, the limitations period is not jurisdictional and is subject to equitable modification.[65] Equitable tolling and equitable estoppel are two different and distinct equitable doctrines which this tribunal and courts have applied to

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[62] *See* 29 C.F.R. § 18.36 (noting that a judge may allow parties to amend and supplement their filings after referral to the OALJ).

[63] Complainant's Response to Respondent's Statement of Uncontroverted Material Facts at 10 (emphasis added).

[64] Although not argued on appeal, the continuing violations doctrine does not apply here. Generally, the doctrine applies in limited circumstances where a series of related acts collectively constitute a single unlawful employment practice, typically in the context of a hostile work environment claim. *See Robles v. Mr. Bults, Inc.*, ARB No. 2025-0058, ALJ Nos. 2025-STA-00050, -00051, -00052, slip op. at 6 (ARB Feb. 20, 2026) (citation omitted) ("The continuing violations doctrine does not apply to discrete acts of alleged discrimination . . ." such as "termination, failure to promote, denial of transfer, or refusal to hire," which each independently trigger their own filing deadline.).

[65] *Trivedi v. Gen. Elec.*, ARB No. 2022-0026, ALJ No. 2022-SOX-00005, slip op. at 6 (ARB Aug. 24, 2022) (citations omitted).

modify a filing deadline.[66] 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."[67] 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) the party has raised the precise statutory claim in issue but has done so in the wrong forum; (2) the party has in some extraordinary way been prevented from filing; and (3) the party has some excusable ignorance of the respondent's discriminatory act.[68] The party requesting tolling bears the burden of establishing circumstances that justify modifying the appeal deadline.[69]

Before the ALJ, Complainant argued that his OSHA complaint was timely under equitable tolling principles.[70] Specifically, Complainant averred that: (1) the statute of limitations issue was resolved because the OALJ's issuance of a Notice of Docketing and Notice of Hearing indicated that the claim was timely; (2) new evidence warranted tolling because the reinstatement order confirms wrongful termination and retaliation; (3) employer misconduct warranted equitable tolling because Respondent opposed discovery and limited Complainant's access to evidence stored in company systems; and (4) the continuing violation doctrine applies because Complainant has faced continuous retaliation since his reinstatement in September 2024.[71]

The ALJ considered and rejected these arguments, explaining that: (1) routine procedural notices from OALJ do not resolve the timeliness of a complaint; (2) ignorance of the law does not justify equitable tolling; (3) the seriousness of the allegations does not excuse compliance with statutory filing deadlines; and (4) the Bolivian court's decision had no bearing on whether the OSHA complaint was timely filed.[72] The ALJ also determined that Complainant failed to identify any specific threats or misconduct by Respondent that prevented

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66 *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)).

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

68 *Id.*

69 *Id.*

70 Order Granting Summary Judgment at 4-7; Complainant's Opposition to Respondent's Motion for Summary Decision at 5.

71 Order Granting Summary Judgment at 4-7; Complainant's Opposition to Respondent's Motion for Summary Decision at 5.

72 Order Granting Summary Judgment at 4-7.

him from filing a timely complaint, and that allegations of post-complaint harassment were unrelated to the adverse actions identified in the original OSHA complaint.[73] Thus, the ALJ concluded that Complainant failed to demonstrate extraordinary circumstances warranting equitable tolling.[74]

On appeal, Complainant maintains that tolling is warranted due to proven employer misconduct and an objective fear of retaliation.[75] First, Complainant alleges the following misconduct by Respondent: (1) failing to investigate SOX-protected disclosures; (2) issuing an unsubstantiated PIP; (3) lacking internal due process prior to termination; (4) acting hostile and demeaning during the termination process; (5) deliberately obfuscating the corporate structure to shield U.S.-based entities; (6) using Incontact Bolivia as a corporate veil for coordinated decision-making by U.S. entities; (7) not complying with reinstatement orders by Bolivian legal authorities; (8) attempting to impose relocation through reinstatement; (9) issuing a second termination letter for the alleged failure to relocate; and (10) abusing the judicial system by failing to comply with reinstatement orders.[76] Second, Complainant contends that these events establish a clear and objective basis for fear of retaliation.[77] Third, Complainant claims his decision to not file a complaint with OSHA was an effort to prevent escalation and to resolve the matter within the Bolivian legal system.[78] Fourth, Complainant alleges that retaliation and harassment have continued following reinstatement.[79] The Board disagrees.

Complainant has not met his burden of establishing circumstances that justify modifying the appeal deadline. Complainant's allegations of employer misconduct that prevented him from filing a timely case are vague, conclusory, and/or unsupported by evidence in the record.[80] Even if any of these allegations are true, including, but not limited to, Respondent refusing to comply with the Bolivian reinstatement order, opposing or limiting discovery, or continuing to engage in

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73 *Id.*

74 *Id.* at 7.

75 Comp. Br. at 5.

76 *Id.* at 5-6. The Board recognizes that several of these employer misconduct allegations are presented for the first time on appeal.

77 Comp. Br. at 7-8.

78 *Id.* at 7.

79 *Id.*

80 Of the recognized classes of situations in which a moving party may be entitled to equitable tolling, as described above, Complainant does not specifically identify any of the three. The Board construes his arguments as asserting that he was, in some extraordinary way, prevented from filing his OSHA complaint.

harassing behavior, Complainant has failed to show how such conduct prevented him from filing his OSHA complaint in a timely manner. The Board finds these arguments unpersuasive, particularly in light of the fact that the alleged misconduct did not prevent Complainant from pursuing his legal action in Bolivia or occurred after the complaint filing deadline. Rather, it appears that Complainant mistakenly relied on his strategic decision to pursue his employment claim through the Bolivian legal system rather than through DOL. This strategic decision is not an extraordinary circumstance outside of Complainant's control that prevented a timely filing. Accordingly, the Board affirms the ALJ's conclusion that Complainant's arguments are insufficient to warrant the application of equitable tolling.

3. Complainant's Motion to Compel Discovery Responses and Request for Subpoenas

On April 22, 2025, Complainant filed a Motion to Compel Discovery Responses and Request for Subpoenas (Motion to Compel) requesting Respondent to produce documents, respond to interrogatories and requests for admissions, and to authorize subpoenas to key witnesses. This motion was pending when the ALJ issued the Order Granting Summary Judgment. In the Order Granting Summary Judgment, the ALJ stated, "[n]either party has filed a motion before the undersigned describing any ongoing discovery disputes."[81]

Before the Board, Complainant argues that the ALJ erred by failing to address and rule on the Motion to Compel, thereby depriving him of the opportunity to substantiate his allegations of misconduct and to rebut Respondent's claims.[82] The Board agrees with Complainant that the ALJ erred in failing to address and rule on the Motion to Compel. Nevertheless, this error was harmless, as the Motion to Compel was immaterial to Complainant's timeliness and equitable tolling concerns below. Complainant attempts to recharacterize this motion on appeal by asserting that the discovery request "directly related to equitable tolling, jurisdiction, and employer liability."[83] The motion, however, made no reference to equitable tolling. Rather, it stated that discovery was "essential to resolve jurisdiction, protected activity and retaliation questions."[84]

Complainant also filed this motion after submitting his response to Respondent's Motion for Summary Judgment. In that response, Complainant identified only outstanding discovery issues concerning extraterritoriality and

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81 Order Granting Summary Judgment at 6.

82 Comp. Br. at 8.

83 *Id.*

84 Motion to Compel at 3-4.

jurisdiction—seeking declarations from Respondent's managers that would demonstrate Complainant's employment was functionally integrated with U.S. operations.[85] Again, in neither filing did Complainant identify concerns or seek discovery related to timeliness or equitable tolling. Therefore, while the ALJ erred in in failing to address and rule on the Motion to Compel, such error was harmless.[86]

CONCLUSION

For the reasons stated above, we **AFFIRM** the ALJ's Order Granting Summary Decision. Accordingly, Complainant's complaint is **DENIED**.

SO ORDERED.

ELLIOT M. KAPLAN
Administrative Appeals Judge

PHILIP G. KIKO
Administrative Appeals Judge

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[85] Complainant's Opposition to Respondent's Motion for Summary Judgment at 2-3.

[86] As to Complainant's other arguments on appeal, including, but not limited to jurisdictional, corporate responsibility, and post-reinstatement retaliation issues, the Board concludes that it does not need to resolve them as it affirms the ALJ's holding that Complainant's OSHA complaint was untimely filed and equitable tolling principles do not apply.