

U.S. Department of Labor

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



IN THE MATTER OF:

MARIA J. PRKIC,

ARB CASE NO. 2025-0074

COMPLAINANT,

ALJ CASE NO. 2025-SOX-00021

ALJ CHRISTOPHER LARSEN

v.

DATE: March 6, 2026

SEZZLE, INC.,

RESPONDENT.

Appearances:

For the Complainant:

Maria J. Prkic; *Pro Se*; Broomfield, Colorado

For the Respondent:

Brett M. Wendt, Esq., Francis A. Wilson, Esq., and Jane Waterman-Joyce, Esq.; *Fisher & Phillips LLP*; Denver, Colorado

Before JOHNSON, Chief Administrative Appeals Judge, and KAPLAN and BURRELL, Administrative Appeals Judges

DECISION AND ORDER REVERSING AND REMANDING

This case arises under 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.¹ On February 15, 2025, Maria Prkic filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging retaliation under SOX.² On February 19, 2025, OSHA issued a

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

² OSHA Determination Letter at 1.

Determination Letter, dismissing the complaint as untimely.³ On March 3, 2025, Complainant objected to the OSHA Determination Letter and an Administrative Law Judge (ALJ) was subsequently assigned to the case.⁴ On July 14, 2025, the ALJ issued an Order Granting Summary Decision (ALJ Order) because Complainant's claim was untimely and not subject to equitable tolling.⁵ On July 28, 2025, Complainant filed a Petition of Review of the ALJ Order with the Administrative Review Board (ARB or Board).⁶

We reverse and remand the ALJ Order because the record shows Complainant met the requirements for equitable tolling by "rais[ing] the precise statutory claim in issue but . . . in the wrong forum."⁷

BACKGROUND

On May 28, 2024, Sezzle, Inc., terminated Complainant's employment.⁸ On July 1, 2024, Complainant retained counsel.⁹ On September 23, 2024, Complainant filed a complaint in federal court, which included a SOX whistleblower retaliation

³ *Id.*

⁴ Petition for Review (Petition) at 2; Respondent Response Brief (Resp. Response Br.) at 5.

⁵ ALJ Order at 3-5.

⁶ ARB Briefing Order at 1.

⁷ *Martin v. Paragon Foods*, ARB No. 2022-0058, ALJ No. 2021-FDA-00001, slip op. at 9 (ARB June 8, 2023) (citation omitted).

⁸ ALJ Order at 3.

⁹ *Id.*

claim.¹⁰ Subsequently, on September 25, 2024, Complainant fired her attorney and became pro se.¹¹

As discussed below, a complainant alleging whistleblower retaliation in violation of SOX must file a complaint with OSHA within 180 days of the alleged violation.¹² The 180-day deadline for Complainant to file a SOX whistleblower retaliation complaint with OSHA was November 24, 2024, and Complainant did not meet the deadline.¹³ Eventually, on February 15, 2025, Complainant filed a SOX retaliation complaint, but OSHA dismissed it as untimely on February 19, 2025.¹⁴ On March 3, 2025, Complainant objected and an ALJ was subsequently assigned to the case.¹⁵

ALJ RULING

The ALJ granted summary decision in favor of Respondent, dismissing Complainant's SOX whistleblower claim as untimely. The ALJ noted that "there appears to be no dispute that Ms. Prkic did not file a timely claim."¹⁶ Thus, the ALJ considered Complainant's arguments for equitably tolling the 180-day limitation for filing a SOX whistleblower retaliation complaint. Complainant raised several arguments for equitable tolling, including that her counsel failed to "preserve her rights under SOX."¹⁷ Complainant also argued she relied on informal SEC

¹⁰ Federal Complaint at 1; ALJ Order at 4; Complainant Opening Brief (Comp. Br.) at 3, 6, 8; Resp. Response Br. at 4.

¹¹ Based solely on the ALJ Order, the timeline is incomplete regarding when Complainant became pro se. The ALJ Order does not state that Complainant terminated her attorney, nor does it identify when any termination occurred. However, the ALJ noted that Respondent retained counsel on July 1, 2024, and that she later filed a pro se federal complaint on September 23, 2024. ALJ Order at 3-4. The ALJ Order's service sheet also listed Complainant as "pro se." In Complainant and Respondent's briefs, the parties highlight that Complainant terminated her counsel on September 25, 2024. Complainant Br. at 8; Resp. Response Br. at 4.

¹² 18 U.S.C. § 1514A; 29 C.F.R. § 1980.103(d).

¹³ Petition at 1.

¹⁴ OSHA Determination Letter at 1.

¹⁵ Petition at 2; Resp. Response Br. at 5.

¹⁶ ALJ Order at 3.

¹⁷ *Id.*

guidance, claiming the SEC told her that “no SEC filing was needed for a district court lawsuit.”¹⁸ Finally, Complainant “believed, based on Respondent’s handbook, that her” internal complaint “to Respondent was sufficient to preserve her” SOX rights.¹⁹

Regarding Complainant’s counsel argument, the ALJ determined that “Counsel’s mishandling of her case – if that is what happened – would not comprise an extraordinary circumstance justifying equitable tolling.”²⁰ The ALJ likewise rejected Complainant’s argument related to informal SEC guidance because the SEC guidance was silent regarding SOX filing requirements.²¹ Finally, the ALJ rejected Complainant’s employer handbook argument, noting “Prkic faults the handbook for not saying something she believes it ought to have said. She does not contend it affirmatively misrepresented anything.”²²

Thus, even assuming that Complainant’s factual allegations were true, the ALJ ruled that equitable tolling did not apply and the complaint was untimely. Because there was no genuine dispute as to any material fact, Respondent was entitled to a decision as a matter of law, and the ALJ granted summary decision and vacated all further proceedings.²³

DISCUSSION

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.”²⁴ 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

¹⁸ *Id.* (citing Complainant’s ALJ Brief in Support of Equitable Tolling at 3).

¹⁹ *Id.*

²⁰ *Id.* at 4.

²¹ *Id.* at 4 n.4.

²² *Id.* at 5.

²³ *Id.*

²⁴ 29 C.F.R. § 18.72.

party.²⁵ 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 an issue of fact that could affect the outcome of the litigation.²⁶ 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.²⁷ If the non-moving party fails to show an essential element of 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.²⁸

The ALJ granted summary decision for Respondent and dismissed Complainant's SOX whistleblower retaliation complaint as untimely. We reverse the ALJ's Order. The record shows that, within 180 days of her termination, Complainant filed the precise statutory claim in the wrong forum by filing a federal complaint that included a SOX retaliation claim. Therefore, equitable tolling applies and the Complainant's SOX whistleblower retaliation complaint is deemed timely.

1. Timeliness and Equitable Tolling Requirements

Complainants alleging whistleblower retaliation in violation of SOX must file their complaints with OSHA within 180 days of the alleged violation or after the date on which the employee became aware of the alleged violation.²⁹ However, the filing deadline is subject to equitable tolling in appropriate circumstances when the complainant is prevented from filing despite exercising that level of diligence which could be reasonably expected in the circumstances.³⁰ The Board has recognized

²⁵ *Jahanbin v. Boeing Co.*, ARB No. 2024-0035, ALJ No. 2023-AIR-00023, slip op. at 4 (ARB Mar. 13, 2025) (citation omitted).

²⁶ *Id.* (citation omitted).

²⁷ *Id.* (citation omitted).

²⁸ *Id.* (citation omitted).

²⁹ 18 U.S.C. § 1514A(b) ("filing a complaint with the Secretary of Labor . . . not later than 180 days after the date on which the violation occurs, or after the date on which the employee became aware of the violation."); 29 C.F.R. § 1980.103(c) (the complainant "may be filed with any OSHA officer or employee."); 29 C.F.R. § 1980.103(d) ("Within 180 days after an alleged violation of the Act occurs or after the date on which the employee became aware of the alleged violation of the Act . . .").

³⁰ *Martin*, ARB No. 2022-0058, slip op. at 9 (citations and quotations omitted).

several principal situations in which a moving party may be entitled to the remedy, including (1) when the movant has raised the precise statutory claim in 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.³¹

2. Precise Statutory Claim in the Wrong Forum

The record shows that Complainant filed a federal complaint that included a SOX whistleblower retaliation claim within the 180-day SOX filing deadline.³² We hold that Complainant’s federal complaint constitutes the filing of the precise statutory claim in the wrong forum and equitable tolling is appropriate.

First, Complainant’s federal complaint clearly met the requirements for the “precise statutory claim.” The federal complaint included a detailed claim for “Retaliation in Violation of the Sarbanes Oxley Act,” citing 18 U.S.C. § 1514A.³³

Next, Complainant met the requirements for “wrong forum.”³⁴ In *Mehra v. West Virginia University*, the ARB equitably tolled a filing deadline because the complainant filed with the U.S. Department of Labor’s (DOL) Office of Inspector General (the wrong forum), instead of the DOL’s Wage and Hour Division (the

³¹ *Id.* (citations omitted).

³² We construe Complainant’s filings as including an argument for equitable tolling based on Complainant raising the precise statutory claim in the wrong forum. For example, Complainant’s Petition for Review noted that, on September 23, 2024, she filed a “pro se federal complaint without OSHA exhaustion.” Petition at 5.

³³ Federal Complaint at 4-5; *see also* ALJ Order at 4; Comp. Br. at 8; Resp. Response Br. at 4. Whether a complainant has “raised the precise statutory claim in issue” is an equitable consideration determined on a case-by-case basis, and it is not limited to the circumstances present in this case.

³⁴ The SOX regulations also support tolling for filing the precise statutory claim in the wrong forum. Notably, the SOX regulations state that filing deadlines may be “*tolled* for reasons warranted by applicable case law,” and include an example of “a complainant [that] *mistakenly files a complaint with [] another agency* instead of OSHA within 180 days after becoming aware of the alleged violation.” 29 C.F.R. § 1980.103(d) (emphasis added).

proper forum).³⁵ Similarly, in this case, Complainant filed the federal complaint with the SOX claim with the United States District Court for the District of Colorado—a forum, but the wrong forum for the claim at this stage.

Finally, Complainant timely raised her SOX claim in the wrong forum. The SOX implementing regulations require filing of a retaliation complaint “[w]ithin 180 days after an alleged violation of the Act occurs or after the date on which the employee became aware of the alleged violation of the Act.”³⁶ Here, on May 28, 2024, Respondent terminated Complainant’s employment,³⁷ and on September 23, 2024 (118 days later), Complainant filed a complaint with her SOX claim in federal court.³⁸ Thus, it would have been timely.³⁹

³⁵ *Mehra v. W. Va. Univ.*, ARB No. 2017-0058, ALJ No. 2017-LCA-00002, slip op. at 4-5 (ARB Nov. 21, 2019). Notably, “forum” is not limited to filing in the wrong forum when the forum is an agency, as the Board has also noted that “[a] forum is a court or other judicial body.” *Ndiaye v. CVS Store No. 6081*, ARB No. 2005-0024, ALJ No. 2024-LCA-00036, slip op. at 8 (ARB Nov. 29, 2006) (citation omitted).

³⁶ 29 C.F.R. § 1980.103(d). The implementing regulations are consistent with the statute. *See* 18 U.S.C. § 1514A(b)(2)(d).

³⁷ ALJ Order at 3.

³⁸ Federal Complaint at 1.

³⁹ The 180-day period to file began on May 28, 2024, and approximately 118 days elapsed before Complainant timely filed the SOX claim in the wrong forum on September 23, 2024. Because Complainant met the tolling requirements for filing in the wrong forum, the limitations clock was tolled until January 22, 2025, when Respondent filed a motion in federal court that first put Complainant on specific notice of OSHA’s filing prerequisite. Comp. Br. at 3. Complainant then filed with OSHA 24 days later, on February 15, 2025—well within the roughly 62 days remaining—both rendering the OSHA filing timely and evidencing reasonable diligence in correcting forum.

Because grounds for equitable tolling are present, we do not consider the other arguments raised by the parties.⁴⁰

CONCLUSION

The record shows that Complainant filed the precise statutory claim in the wrong forum. Thus, Complainant met the requirements for equitable tolling, and Complainant's SOX retaliation complainant is deemed timely. Accordingly, we **REVERSE** the ALJ's Order, and **REMAND** for further proceedings consistent with this Order.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

ELLIOT M. KAPLAN
Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge

⁴⁰ On December 5, 2025, Complainant filed a Supplemental Brief and Submission of New Evidence in Support of Equitable Tolling and Reversal (Supplemental Brief), asking the Board to consider "newly discovered evidence validating Complainant's protected whistleblowing and extraordinary circumstances for equitable tolling." On December 15, 2025, Respondent filed a Motion to Strike Complainant's December 5, 2025 Supplemental Brief (Motion to Strike). Subsequently, on December 29, 2025, Complainant filed an Opposition Brief to the Motion to Strike. On January 14, 2026, the ARB took the filings under advisement. Given our determination that equitable tolling is appropriate, the Supplemental Brief and Motion to Strike are moot.