

**U.S. Department of Labor**

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



**IN THE MATTER OF:**

**JARED ASHCRAFT,**

**ARB CASE NOS. 2026-0008  
2026-0017**

**COMPLAINANT,**

**ALJ CASE NO. 2025-SOX-00035  
ALJ THERESA C. TIMLIN**

**v.**

**FIRST CITIZENS BANK,**

**DATE: January 30, 2026**

**RESPONDENT.**

**Appearances:**

***For the Complainant:***

**Jared Ashcraft; *Pro Se*; Las Vegas, Nevada**

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

### **DECISION AND ORDER DENYING INTERLOCUTORY APPEALS**

This case arises under the employee protection provisions of 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.<sup>1</sup> On November 26, 2025, Complainant Jared Ashcraft emailed the Administrative Review Board (ARB or Board) an Emergency Petition for Interlocutory Review and Supervisory Relief (Petition), seeking interlocutory review of a United States Department of Labor Administrative Law Judge's (ALJ) Order Staying Discovery Deadlines and Denying All Pending Motions and Filings Pending Decision on Motion to Dismiss (Order Staying Deadlines and Denying Motions), issued on November 24, 2026, and Clarification Order, issued on November 25, 2025. On January 12, 2026, Complainant filed a Third Addendum to Emergency Petition for Interlocutory Review and Supervisory Relief (Third Addendum), seeking interlocutory review of the ALJ's subsequent Order Denying Respondent's Motion to Dismiss and Addressing Complainant's Motion Practice (Order Denying Motion to

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

Dismiss), issued on January 6, 2026.<sup>2</sup> For the reasons set forth below, we deny Complainant's interlocutory appeals.

### BACKGROUND

On or about May 22, 2025, Complainant filed a complaint with the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA), alleging that Respondent First Citizens Bank retaliated against him in violation of SOX.<sup>3</sup> OSHA dismissed the complaint on June 6, 2025, and Complainant requested a hearing with the Department's Office of Administrative Law Judges (OALJ).<sup>4</sup> OALJ docketed the case on June 12, 2025, and the case was assigned to ALJ Theresa C. Timlin on September 2, 2025.

Between the case's docketing with OALJ on June 12, 2025, and the assignment of ALJ Timlin on September 2, 2025, Complainant filed at least 20 motions, notices, and other filings with OALJ covering a range of topics, including, among other things, notices about "recent developments," motions to file supporting documents, a motion for sanctions, a motion to compel, notices of alleged deficiencies in discovery, and allegations of witness intimidation.<sup>5</sup>

Complainant continued to frequently file after ALJ Timlin was assigned to preside over the matter as well. Between September 2, 2025, and September 25, 2025, Complainant filed at least 22 additional motions, notices, and other filings with the ALJ, including, among other things, a request for the ALJ to recognize certain filings and matters to ensure "record completeness," motions to compel discovery, a "notice" that Respondent's counsel was acting without having entered a

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<sup>2</sup> Complainant's Petition of the Order Staying Deadlines and Denying Motions and the Clarification Order was assigned ARB Case Number 2026-0008. Because Complainant's Third Addendum seeks review of a different interlocutory order (the Order Denying Motion to Dismiss), the Board hereby assigns the Third Addendum ARB Case Number 2026-0017, and consolidates it with ARB Case Number 2026-0008 for decisional purposes.

<sup>3</sup> Order Clarifying and Modifying August 19, 2025 Minute Order at 1.

<sup>4</sup> *Id.*

<sup>5</sup> Chief ALJ Stephen R. Henley issued Minute Orders on August 1 and 19, 2025, instructing the parties to defer filing discovery-related motions until a presiding ALJ was assigned, staying deadlines for Respondent to respond to Complainant's filings, and striking Complainant's deposition notices. Chief ALJ Henley then issued an Order Clarifying and Modifying August 19, 2025 Minute Order on August 21, 2025, stating that the parties would have the opportunity to file motions and present evidence to a presiding ALJ, stating again that the parties could not file motions or filings until the matter was assigned, stating that any filings submitted before the assignment of an ALJ would not become part of the official administrative record, and staying discovery. Order Clarifying and Modifying August 19, 2025 Minute Order at 2-3.

notice of appearance, a motion for “terminating sanctions,” a motion to strike “misrepresentations” made by Respondent’s counsel, a notice of “delay tactics” by Respondent, copies of Complainant’s discovery requests, a motion to disqualify Respondent’s counsel, and a motion to bar Respondent from substituting counsel.

On September 25, 2025, the ALJ issued an Order Denying All Pending Motions and Filings (Order Denying Motions). The ALJ ruled: “Upon consideration and given the parties’ apparent inability to engage constructively in discovery without the tribunal’s intervention, all motions filed on behalf of Complainant and Respondent are hereby **DENIED** and discovery is **STAYED**.”<sup>6</sup> The ALJ also stated that additional directives would be provided at the Prehearing Conference, scheduled for September 30, 2025.<sup>7</sup>

The ALJ conducted the Prehearing Conference on September 30, 2025. Respondent stated that it intended to file a potentially dispositive Motion to Dismiss.<sup>8</sup> As a result, the ALJ stayed all discovery pending resolution of that Motion to Dismiss.<sup>9</sup> Respondent ultimately filed the Motion to Dismiss on November 14, 2025.

After the September 30 Prehearing Conference, Complainant continued to file with the ALJ. Between September 30, 2025, and November 24, 2025, Complainant filed at least 12 additional motions and other filings with the ALJ, including notices about opposing counsel’s “material misstatement,” a “Notice of Judicial Admission,” a “Notice of Preservation of Evidence,” filings concerning Complainant potentially pursuing a “kick out” to federal district court, a motion for default judgment, a motion for sanctions, a filing “memorializing” the ALJ’s verbal orders during the September 30 Prehearing Conference, and a “Notice of Corrupted Administrative Process.” Complainant also states that he attempted to submit other filings, but they were rejected by the ALJ.<sup>10</sup>

On November 24, 2025, the ALJ issued the Order Staying Deadlines and Denying Motions. The ALJ stated that at the September 30 Prehearing Conference, she “granted Respondent’s request to stay discovery, and advised that all motions and filings were also stayed pending decision of the Motion to Dismiss.”<sup>11</sup>

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<sup>6</sup> Order Denying Motions at 3.

<sup>7</sup> *Id.*

<sup>8</sup> September 30, 2025 Prehearing Conference Transcript at 6.

<sup>9</sup> *Id.* at 14.

<sup>10</sup> Petition at 10-11.

<sup>11</sup> Order Staying Deadlines and Denying Motions at 1-2. Complainant disputes that the ALJ stayed all motions and other filings at the Prehearing Conference. Petition at 3, 9. We need not resolve this dispute at this time.

Nevertheless, Complainant continued to file motions and other filings “which, again, do not adhere to proper motion practice.”<sup>12</sup> The ALJ ruled: “all motions and filings filed on behalf of Complainant are hereby **DENIED** and all deadlines are hereby **STAYED**. The parties are advised that no other motions will be decided until a decision is made on the pending Motion to Dismiss.”<sup>13</sup>

On November 25, 2025, the ALJ issued the Clarification Order. The ALJ clarified that she would consider Complainant’s Opposition to Respondent’s Motion to Dismiss, filed on November 15, 2025.<sup>14</sup> The ALJ stated that otherwise, “[a]ny submissions filed prior to the undersigned’s ruling on the Motion to Dismiss shall be summarily rejected.”<sup>15</sup>

On November 26, 2025, Complainant emailed his Petition to the Board. In the Petition, Complainant asserts that the ALJ’s prohibition on filing “effectively locks him out of the OALJ forum, [and] prevents him from preserving issues related to Answer deadlines, spoliation, and alleged fraud on the tribunal . . . .”<sup>16</sup> Complainant also asserts that the ALJ violated his “ADA/rehabilitation-related requests.”<sup>17</sup> Specifically, Complainant asserts that he requested, but had not received a copy of, the transcript of the September 30 Prehearing Conference as an accommodation for a disability.<sup>18</sup>

In the Petition, Complainant asks the Board to: (1) “vacate or modify” the ALJ’s orders to “remove the blanket filing ban and ‘summary rejection’ directive;” (2) direct the ALJ to accept and docket Complainant’s rejected filings; and (3) direct the ALJ to produce the September 30 Prehearing Conference transcript.<sup>19</sup>

Complainant sent two additional emails to the Board on November 30, 2025, attaching an Addendum to Emergency Petition for Interlocutory Review and Supervisory Relief (First Addendum) and Second Addendum to Emergency Petition for Interlocutory Review and Supervisory Relief (Second Addendum). Like the Petition, the First and Second Addenda challenge the ALJ’s Order Staying Deadlines and Denying Motions and Clarification Order. Thereafter, Complainant

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<sup>12</sup> Order Staying Deadlines and Denying Motions at 2.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> Clarification Order at 2.

<sup>15</sup> *Id.*

<sup>16</sup> Petition at 4.

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Id.* at 12. Complainant states that, per the ALJ’s direction, he filed a Freedom of Information Act (FOIA) request for the transcript, but had not yet received it. *Id.*

<sup>19</sup> *Id.* at 5, 23.

filed several additional “Notices” and other filings with the Board regarding his appeal, concerns with the accuracy of the record before the ALJ, concerns with the ALJ’s failure to provide him a copy of the September 30 Prehearing Conference transcript, and other issues.<sup>20</sup>

On January 6, 2026, the ALJ issued the Order Denying Motion to Dismiss. In that Order, in addition to denying Respondent’s Motion to Dismiss, the ALJ made new orders regarding motions practice and other procedures before the ALJ.

First, the ALJ addressed Complainant’s use of Artificial Intelligence (AI). The ALJ stated that she granted Complainant permission to use AI as a reasonable accommodation in presenting his case.<sup>21</sup> However, the ALJ stated that Complainant was using AI to “inundat[e] the Tribunal (and Respondent’s Counsel) with endless motion practice.”<sup>22</sup> Therefore, the ALJ ordered Complainant to “**limit his use of artificial intelligence to research and drafting only**. Final submission to this Tribunal must be human generated and edited and organized in a comprehensible and concise manner.”<sup>23</sup>

Next, the ALJ addressed Complainant’s practice of submitting “Notice” filings. In addition to Motions, the ALJ stated that Complainant filed many other “Notices,” which the ALJ said “simply reflect Complainant’s record of events in this proceeding and do not request any form of relief.”<sup>24</sup> The ALJ ordered Complainant “**to refrain from filing any ‘notice’ submissions where he is not requesting any immediate relief.**”<sup>25</sup>

Finally, the ALJ addressed the fact that Complainant had recorded the September 30 Prehearing Conference without permission.<sup>26</sup> The ALJ reminded Complainant that he was subject to the OALJ Rules of Practice and Procedure, which provide that “parties, witnesses and spectators are prohibited from using

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<sup>20</sup> Complainant also sent or copied the Board on additional emails after filing the Petition. We need not and will not document them all here, as they are not material to our resolution of these appeals.

<sup>21</sup> Order Denying Motion to Dismiss at 2.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 7 (emphasis original).

<sup>24</sup> *Id.* at 3.

<sup>25</sup> *Id.* at 7 (emphasis original).

<sup>26</sup> *Id.* at 4. Complainant notified the ALJ via email on November 30, 2025, that he “maintains a contemporaneous personal recording (lawfully made as a participant) of the September 30 teleconference.” *Id.*

video or audio recording devices to record hearings.”<sup>27</sup> Therefore, the ALJ ordered Complainant “**to refrain from using personal recording devices to record any verbal communication before this Tribunal.**”<sup>28</sup> However, the ALJ informed Complainant that every conference, proceeding, and hearing would be transcribed by a court reporter and that the transcript would be available to the Complainant.<sup>29</sup>

On January 12, 2026, Complainant filed the Third Addendum, challenging the Order Denying Motion to Dismiss. In the Third Addendum, Complainant asks the Board to lift the prohibition on the use of AI to generate final submissions, lift the prohibition on Complainant submitting “Notice” filings, and lift the prohibition on Complainant recording proceedings before the ALJ.<sup>30</sup>

In the Third Addendum, Complainant also states that the ALJ failed to rule on a Motion to Disqualify the ALJ he filed on December 4, 2025.<sup>31</sup> Complainant asks the Board to compel the ALJ to rule on the Motion to Disqualify, or otherwise “reassign[ ] to a neutral” ALJ.<sup>32</sup> Finally, Complainant asks the Board to: (1) stay a Prehearing Conference the ALJ scheduled for January 12, 2026 (the same day the Complainant filed the Third Addendum); (2) order the ALJ to produce the transcript of the September 30 Prehearing Conference; and (3) order “[s]uch other relief as necessary to preserve fair process and record integrity.”<sup>33</sup>

On January 15, 2026, the ALJ issued a Notice of Hearing and Pre-Hearing Order (Pre-Hearing Order). Among other things, the Pre-Hearing Order opened discovery.<sup>34</sup> The ALJ also reopened motions practice. The Pre-Hearing Order notified the parties of the rules for motions practice and stated: “As of the date of this Order, there are no pending motions before the undersigned. Any future motions should be addressed to this office, copying counsel.”<sup>35</sup>

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<sup>27</sup> *Id.* (citing 29 C.F.R. § 18.86).

<sup>28</sup> *Id.* at 7.

<sup>29</sup> *Id.* at 4.

<sup>30</sup> Third Addendum at 5-8.

<sup>31</sup> *Id.* at 7.

<sup>32</sup> *Id.* at 8.

<sup>33</sup> *Id.*

<sup>34</sup> Pre-Hearing Order at 3.

<sup>35</sup> *Id.* at 5.

## JURISDICTION & STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the Board to hear appeals from ALJ decisions and issue agency decisions in cases arising under SOX.<sup>36</sup> This authority includes the discretion to consider interlocutory appeals “in exceptional circumstances . . . .”<sup>37</sup>

### DISCUSSION

#### 1. Most of the Issues Raised by Complainant are Moot

We decline to accept most of the issues raised in Complainant’s appeals because they are moot.<sup>38</sup> As detailed above, in his appeals, Complainant asks the Board to: (1) “vacate or modify” the Order Staying Deadlines and Denying Motions and Clarification Order prohibiting Complainant from filing with the ALJ pending resolution of the Motion to Dismiss; (2) direct the ALJ to accept motions Complainant attempted to file during the prohibition period that the ALJ refused to docket; (3) direct the ALJ to produce the September 30 Prehearing Conference transcript; (4) lift the prohibition on using AI to draft final submissions; (5) lift the prohibition on submitting Notice filings; (6) compel the ALJ to rule on the Motion to Disqualify and/or appoint a new ALJ; (7) stay the January 12 Prehearing Conference; and (8) “order such other relief as necessary to preserve fair process and record integrity.”

Complainant’s requests to vacate or modify the Order Staying Deadlines and Denying Motions and Clarification Order, direct the ALJ to accept and docket Complainant’s rejected motions, and direct the ALJ to rule on the Motion to Disqualify are all moot. Although the ALJ previously and temporarily prohibited Complainant from filing motions and other submissions, that prohibition is no longer in effect. As the ALJ made clear in the Order Staying Deadlines and Denying Motions and in the Clarification Order, the filing prohibition was only in effect until the ALJ ruled on Respondent’s potentially dispositive Motion to Dismiss. The ALJ resolved the Motion to Dismiss in Complainant’s favor in the Order Denying Motion

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<sup>36</sup> 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).

<sup>37</sup> *Id.*

<sup>38</sup> *See Video Tutorial Servs., Inc. v. MCI Telecomms., Corp.*, 79 F.3d 3, 5-6 (2d Cir. 1996) (dismissing interlocutory appeal as moot where interlocutory order staying arbitration was no longer in effect; “[a]n interlocutory appeal from a temporary stay order no longer in effect, like an interlocutory appeal from a since-expired or vacated temporary restraining order, is the paradigm of a moot appeal”); *In re Caribbean Tubular Corp.*, 813 F.2d 533, 534 n.2 (1st Cir. 1987) (“[W]hen an order of the district court renders a pending interlocutory appeal moot, the court of appeals should dismiss that appeal.”).

to Dismiss issued on January 6, 2026, and the ALJ made clear that Complainant could once again file motions, subject to applicable rules and procedures, in the Pre-Hearing Order issued on January 15, 2026. Complainant may now file motions with the ALJ. This includes refiling the motions that the ALJ previously declined to docket and/or the Motion to Disqualify,<sup>39</sup> to the extent Complainant deems it prudent and necessary.

Complainant's request for the Board to order the ALJ to produce the September 30 Prehearing Conference transcript is also moot. On January 17, 2026, Complainant filed a copy of the certified transcript from the court reporter with the Board. Thus, Complainant clearly has now received the transcript.<sup>40</sup>

Finally, Complainant's request to stay the January 12 Prehearing Conference—which he did not request until the day the Prehearing Conference was scheduled to occur—is also moot. Complainant did not specify why he believes the Prehearing Conference should be stayed and, in any event, the date for the Prehearing Conference has already passed.

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<sup>39</sup> Complainant asserts that the ALJ did not rule on the Motion to Disqualify. Third Addendum at 7. Although Complainant is correct that the ALJ did not separately rule on the Motion to Disqualify, Complainant filed the Motion to Disqualify during the period when the ALJ prohibited the filing of any motion and when the ALJ made clear that any motion filed would be summarily denied. Consistent with the ALJ's prior orders, the ALJ also clarified in the Pre-Hearing Order that as of January 15, 2026, "there are no pending motions before the undersigned." Pre-Hearing Order at 5. Additionally, we deny Complainant's request to appoint a new ALJ. The Board does not consider denial of requests for recusal in interlocutory appeals. *Manoharan v. HCL Am., Inc.*, ARB No. 2021-0031, ALJ Nos. 2018-LCA-00029, 2021-LCA-00009, slip op. at 4 (ARB June 30, 2021) (citation omitted). As with the other issues raised in these appeals, Complainant may raise any denial of recusal or disqualification of the ALJ on appeal of a final judgment, if necessary and properly preserved.

<sup>40</sup> As noted above, Complainant asserts that the ALJ violated his rights under the Americans with Disabilities Act (ADA) and/or the Rehabilitation Act by failing to produce the transcript. Petition at 5, 12, 21. The Board and the ALJ, as instrumentalities of the federal government, are not covered by the ADA, but are bound by 29 C.F.R. Part 33, authorized, in part, by section 504 of the Rehabilitation Act, which may require certain accommodations for a covered individual to utilize the Board's and the ALJ's services. *Barnes v. R.I. Pub. Transit Auth.*, ARB No. 2025-0086, ALJ No. 2024-NTS-00004, slip op. at 7 (ARB Jan. 13, 2026) (citations omitted). However, the Secretary has not given the Board jurisdiction over claims of alleged violations of the Rehabilitation Act, which must proceed through other channels within the Department of Labor. See 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. Part 33.

## 2. Complainant’s Interlocutory Appeals Do Not Satisfy the Collateral Order Exception

We also decline to accept Complainant’s appeals because they do not satisfy the collateral order exception. As stated above, the Secretary of Labor’s delegation of authority to the Board provides that interlocutory appeals should only be considered in “exceptional circumstances.” The Board takes the Secretary’s dictate seriously and has emphasized repeatedly that interlocutory appeals are generally disfavored and that there is a strong policy against piecemeal appeals in stages before the final order.<sup>41</sup>

When a party seeks interlocutory review of an ALJ’s non-final order, the Board has elected to look to the interlocutory review procedures used by federal courts, including requesting the trial court certify issues involving a controlling question of law for immediate appeal in accordance with 28 U.S.C. § 1292(b).<sup>42</sup> It does not appear that Complainant requested or received ALJ certification under 28 U.S.C. § 1292(b) in this case.

If a party has failed to obtain ALJ certification, the Board may still consider reviewing an interlocutory order that meets the “collateral order” exception.<sup>43</sup> The collateral order exception applies if the appealed decision belongs to that “small class [of decisions] which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.”<sup>44</sup> The Board has held many times that “we must strictly construe the collateral order exception to avoid the serious ‘hazard that piecemeal appeals will burden the efficacious administration of justice and unnecessarily protract litigation.’”<sup>45</sup>

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<sup>41</sup> *E.g., Mitchell v. Manning Trucking, Inc.*, ARB No. 2025-0010, ALJ No. 2024-STA-00020, slip op. at 3 (ARB Dec. 17, 2024) (citations omitted); *Priddle v. United Airlines, Inc.*, ARB No. 2021-0064, ALJ No. 2020-AIR-00013, slip op. at 7 (ARB Jan. 26, 2022) (citations omitted).

<sup>42</sup> *Mitchell*, ARB No. 2025-0010, slip op. at 3.

<sup>43</sup> *Id.* at 4.

<sup>44</sup> *Gloss v. Tata Chems. N. Am.*, ARB No. 2022-0054, ALJ No. 2020-CAA-00008, slip op. at 3 (ARB Sept. 20, 2022) (citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949)).

<sup>45</sup> *Johnson v. Siemens Bldg. Techs., Inc.*, ARB No. 2007-0010, ALJ No. 2005-SOX-00015, slip op. at 5 (ARB Jan. 19, 2007) (quoting *Corrugated Container Antitrust Litig. Steering Comm. v. Mead Corp.*, 614 F.2d 958, 960 n.2 (5th Cir. 1980)); accord *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009) (stressing that the collateral order doctrine must “never be allowed to swallow the general rule that a party is entitled to a single appeal, to be deferred until final judgment has been entered.” (internal quotation and

To fall within the collateral order exception, the order appealed must: (1) conclusively determine the disputed question; (2) resolve an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment.<sup>46</sup> Even setting aside the first two prongs of the collateral order test, we conclude that Complainant’s appeals do not satisfy the third prong because all the issues raised by Complainant may be effectively reviewed on appeal from a final judgment of the ALJ.

To be “effectively unreviewable,” the right sought to be vindicated must “be, for all practical and legal purposes, destroyed if it were not vindicated prior to final judgment.”<sup>47</sup> As long as the rights at issue “can be adequately vindicated by other means, the chance that the litigation at hand might be speeded, or a particular injustice averted, does not provide a basis for” immediate appellate review of an interlocutory order.<sup>48</sup>

Complainant’s appeals concern procedural rulings and orders imposed to control the conduct of the proceedings below. The Board has repeatedly declined to

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citation omitted)); *Kenyatta v. Moore*, 744 F.2d 1179, 1182-83, 1186 (5th Cir. 1984) (stating that the finality rule “is not arbitrary but functional. It helps to preserve the respect due trial judges by minimizing appellate-court inference. It reduces the ability of litigants to harass opponents and to clog the courts through a succession of costly and time-consuming appeals and it hence is crucial to the efficient administration of justice.”) (internal quotations and citation omitted).

<sup>46</sup> *Mitchell*, ARB No. 2025-0010, slip op. at 4 (citation omitted).

<sup>47</sup> *Priddle*, ARB No. 2021-0064, slip op. at 8 (quoting *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prod. Liab. Litig.*, 418 F.3d 372, 377 (3d Cir. 2005)).

<sup>48</sup> *Mohawk Indus.*, 558 U.S. at 107 (internal quotations and citation omitted); *see also Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 872 (1994) (“A fully litigated case can no more be untried than the law’s proverbial bell can be unring, and almost every pretrial or trial order might be called ‘effectively unreviewable’ in the sense that relief from error can never extend to rewriting history. Thus, erroneous [orders] may burden litigants in ways that are only imperfectly reparable by appellate reversal of a final district court judgment . . . . But if immediate appellate review were available every such time, Congress’s final decision rule would end up a pretty puny one . . . .”); *see generally* CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3911.4 (3d ed. Sept. 2025 update) (“The mere burden of submitting to trial proceedings that will be wasted if the appellant’s position is correct does not support collateral order appeal. Nor is it enough to show that a wrong order may cause tactical disadvantages that cannot be undone even by a second trial. The final judgment rule rests on a determination that ordinarily these costs be borne to support the greater benefits that generally flow [from] denying interlocutory appeal.”).

interfere with an ALJ's procedural orders in interlocutory appeals because they are readily subject to review on appeal from a final judgment.<sup>49</sup>

Complainant contends these procedural and case-control orders would be effectively unreviewable if not immediately considered by the Board because “the window” to pursue the issues raised in his motions, document his concerns, and obtain the Prehearing Conference transcript as an accommodation “will have effectively closed.”<sup>50</sup> According to Complainant, “[a]n appeal from a final decision cannot retroactively create a record that the ALJ has refused to allow to be built.”<sup>51</sup> We disagree. Complainant may appeal the ALJ's decision, including her procedural orders and any restrictions she placed on Complainant's ability to file, at the conclusion of the ALJ proceedings. If the Board agrees with Complainant at that time that the ALJ erred, and that the error was not harmless, the Board can order necessary relief. This includes remanding the case to the ALJ with appropriate instructions for additional proceedings, including to remove filing prohibitions or restrictions and permit Complainant to file documents and otherwise “build” the record, if necessary and appropriate.

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<sup>49</sup> *Lewis v. Deepwell Energy Servs., LLC*, ARB Nos. 2025-0037, -0039, -0051, ALJ No. 2024-STA-00042, slip op. at 7-8 (ARB Apr. 23, 2025) (denying interlocutory appeals of ALJ orders prohibiting complainant from filing, denying reconsideration, denying motion for recusal, and denying request to certify for interlocutory appeal); *Mawhinney v. Transp. Workers Union*, ARB No. 2015-0013, ALJ No. 2012-AIR-00014, slip op. at 3 (ARB Feb. 3, 2015) (declining interlocutory review concerning ALJ orders denying amendments to arguments about individual liability and concerning alleged ex parte communications; “the Board may fully consider and dispose of both issues he has presented, upon appeal of the ALJ's final order in this case, should that be necessary”); *Pragasam v. Wellness Home Health Care, Inc.*, ARB No. 2011-0017, ALJ No. 2010-LCA-00018, slip op. at 6 (ARB Apr. 12, 2011) (“[T]here is no viable argument that the procedural and discovery dispute issues presented here are subject to the collateral order exception . . . . The ARB can most certainly review the procedural issues Pragasam has raised regarding default judgment, joinder of parties, and audio CD transcription upon appeal of the ALJ's final decision in this case.”); *see also Meyers v. Ely*, 794 F. App'x 301 (4th Cir. Feb. 20, 2020) (denying interlocutory appeal of order prohibiting plaintiff from filing, pending an evidentiary hearing).

<sup>50</sup> Petition at 20.

<sup>51</sup> *Id.*

**CONCLUSION**

For the foregoing reasons, we **DENY** Complainant's interlocutory appeals.

**SO ORDERED.**

**RANDEL K. JOHNSON**  
**Chief Administrative Appeals Judge**

**THOMAS H. BURRELL**  
**Administrative Appeals Judge**