

U.S. Department of Labor

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



IN THE MATTER OF:

CAROLINE GADBURY,

ARB CASE NO. 2026-0024

COMPLAINANT,

ALJ CASE NO. 2025-SOX-00022

ALJ DREW A. SWANK

v.

DATE: April 17, 2026

**PARK AEROSPACE CORPORATION
AND MARK ESQUIVEL,**

RESPONDENTS.

Appearances:

For the Complainant:

Caroline Gadbury; *Pro Se*; Wichita, Kansas

For the Respondents:

Diane H. Sorensen, Esq.; *Morris, Laing, Evans, Brock & Kennedy, Chtd.*; Wichita, Kansas

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

DECISION AND ORDER DENYING INTERLOCUTORY APPEAL

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.¹ Respondents Park Aerospace Corporation and Mark Esquivel filed a petition for interlocutory review requesting that the Administrative Review Board (Board) review an Administrative Law Judge's (ALJ) Order Denying Respondent's Motion

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

for Summary Decision (ALJ Order). For the following reasons, we deny Respondents' petition for interlocutory review.

BACKGROUND

Complainant Caroline Gadbury filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) on or about October 24, 2024, alleging that Respondents terminated her employment in violation of SOX. On November 6, 2025, after the matter was assigned to an Administrative Law Judge, Respondents filed a Motion for Summary Decision. On February 20, 2026, the ALJ issued an Order Denying Respondent's Motion for Summary Decision.

On March 6, 2026, Respondents filed a Petition for Review with the Board seeking review of the ALJ Order. On March 12, 2026, the Board issued an Order to Show Cause which explained that, because the ALJ had not yet issued a decision fully disposing of all claims in Complainant's complaint, the petition was for interlocutory review. The Board ordered Complainant to file a brief within ten calendar days explaining why the Board should not dismiss the interlocutory appeal and demonstrate why this matter satisfied the three elements of the collateral order exception identified in the order. On March 24, 2026, Respondents filed a response.

JURISDICTION AND STANDARD OF REVIEW

The Board's delegated authority includes the consideration and disposition of interlocutory appeals "in exceptional circumstances, provided such review is not prohibited by statute."² This authority includes the discretion to consider interlocutory appeals "in exceptional circumstances"³

² Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13186 (Mar. 6, 2020)).

³ *Id.*

DISCUSSION

1. The ALJ's Denial of Summary Decision is Not a Final Order

Respondents contend that the Board should consider their appeal because the ALJ issued a notice of appeal rights in the ALJ Order, citing to *Swint v. NetJets Aviation, Inc.*⁴ Respondents argue that this “signaled that the legal issues decided were significant enough for immediate review.”⁵

Respondents' reliance on *Swint* is misplaced. In *Swint*, the ALJ's order granting a motion to dismiss on twelve claims but denying summary decision on two claims included a Notice of Appeal Rights.⁶ Although the Board acknowledged that it was prudent of *Swint* to file a petition for review, the Board made it clear that the complainant remained obligated to demonstrate why the Board should depart from its usual practice and accept the interlocutory appeal.⁷ For the reasons stated below, Respondents have not done so here. Moreover, the Board has held that the inclusion of appeal rights, in and of itself, does not justify immediate interlocutory review.⁸ Thus, the ALJ's denial of summary decision was not a final order and Respondents' appeal from the ALJ order is interlocutory.

2. Respondents' Interlocutory Appeal Does Not Satisfy the Collateral Order Exception

We decline to accept Respondents' appeal because it does 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.⁹

⁴ Response to Order to Show Cause at 1.

⁵ *Id.* at 2.

⁶ *Swint v. NetJets Aviation, Inc.*, ARB No. 2017-0012, ALJ Nos. 2014-AIR-00021, 2016-AIR-00011, slip op. at 2 (ARB Feb. 8, 2017).

⁷ *Id.*

⁸ *Gunther v. Deltek, Inc.*, ARB Nos. 2012-0097, -0099, ALJ No. 2010-SOX-00049, slip op. at 2 (ARB Sept. 11, 2012).

⁹ *Id.* (citations omitted).

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).¹⁰ It does not appear that Respondents 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. 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.”¹¹

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.¹²

Respondents contend that the Board should accept its interlocutory appeal because the ALJ committed legal error and also to serve the interest of efficiency and to avoid unnecessary litigation.¹³ Specifically, Respondents contend that the ALJ committed a legal error in denying summary decision on the issue of whether Complainant engaged in protected activity.¹⁴ Respondents contend that the ALJ's failure “to follow controlling law will lead to judicial inefficiency by requiring a protracted hearing covering all elements of the *prima facie* claim.”¹⁵ Respondents further contend that, if the Board waits until after a full evidentiary hearing to

¹⁰ *Gulden v. Exxon Mobil Corp.*, ARB No. 2023-0050, ALJ Nos. 2023-SOX-00021, -00022, slip op. at 4 (ARB Feb. 29, 2024) (citation omitted).

¹¹ *Id.* at 5 (citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949)).

¹² *Id.* (citation omitted).

¹³ Response to Order to Show Cause at 2-3.

¹⁴ *Id.*

¹⁵ *Id.* at 2.

address the legal questions pertaining to protected activity, their “right to avoid unnecessary litigation on a legally deficient claim” will be “lost forever.”¹⁶

Setting aside the first prong of the collateral order test, Respondents’ appeal does not satisfy the second and third prongs. The issue of whether Complainant engaged in protected activity is not separate from the merits of the action but rather is squarely on the merits.¹⁷ Thus, Respondents have not satisfied the second prong.

Respondents also fail to establish the third prong. 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.”¹⁸ 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.¹⁹

Respondents’ rights can be adequately vindicated at the conclusion of the ALJ’s proceedings. Should the ALJ rule against Respondents, Respondents can appeal to the Board and the Board can review the question of whether Complainant

¹⁶ *Id.* at 4.

¹⁷ *Gloss v. Tata Chems. N. Am.*, ARB No. 2022-0054, ALJ No. 2020-CAA-00008, slip op. at 4 (ARB Sept. 20, 2022) (finding, in part, that whether the complainant had engaged in protected activity was one of the complainant’s central claims and was squarely on the merits).

¹⁸ *Lattimore v. Alaska Airlines, Inc.*, ARB No. 2025-0089, ALJ No. 2025-AIR-00038, slip op. at 5 (ARB Mar. 9, 2026) (citation omitted).

¹⁹ *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 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 unrung, 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) (internal citations omitted) (“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.”).

engaged in protected activity, along with any other alleged error by the ALJ. If the Board agrees with Respondents, the Board can order the appropriate relief. Even if there may be some efficiency to reviewing the issue now, that does not render an issue “effectively unreviewable.” Moreover, the Board has repeatedly held that orders on summary decision are not “effectively unreviewable.”²⁰

CONCLUSION

For the foregoing reasons, we **DENY** Respondents’ interlocutory appeal.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

PHILIP G. KIKO
Administrative Appeals Judge

²⁰ See *Gloss*, ARB No. 2022-0054, slip op at 4 (an ALJ’s decision to grant summary decision in part could be reviewed after the ALJ issued a final post-hearing decision); *Manoharan v. HCL America, Inc.*, ARB No. 2021-0031, ALJ Nos. 2018-LCA-00029, 2021-LCA-00009, slip op. at 4 (ARB June 30, 2021) (an ALJ’s grant of summary decision on a wage claim did not fall within the collateral order exception because it was fully reviewable on appeal of the final decision of the ALJ); *Adm’r, Wage & Hour Div., U.S. Dep’t of Lab. v. Ten West Cattle, Inc.*, ARB No. 2020-0059, ALJ No. 2018-TAE-00035, slip op. at 4 (ARB Sept. 14, 2020) (an ALJ’s order denying a respondent’s motion for summary decision did not satisfy the collateral order exception because questions regarding employee coverage were fully reviewable on appeal of a final decision of the ALJ).