U.S. Department of Labor

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

IN THE MATTER OF:

PETE SZMURLO,

COMPLAINANT,

v.

THYSSENKRUPP ELEVATOR,

RESPONDENT.

ARB CASE NOS. 2026-0025
2026-0026

ALJ CASE NO. 2025-SOX-00034
ALJ STEVEN D. BELL

DATE: June 23, 2026

Appearances:

For the Complainant:
Pete Szmurlo; *Pro Se*; Munster, Indiana

For the Respondent:
Danielle M. Kays, Esq.; *Fisher & Phillips LLP*; Chicago, Illinois

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

DECISION AND ORDER DENYING INTERLOCUTORY APPEALS

In this case, Complainant Pete Szmurlo seeks interlocutory review of a United States Department of Labor Administrative Law Judge's (ALJ) orders concerning discovery and other matters. For the reasons set forth below, we deny Complainant's interlocutory appeals.

BACKGROUND

On May 14, 2025, Complainant filed a complaint with the Occupational Safety and Health Administration (OSHA), alleging that Respondent ThyssenKrupp Elevator unlawfully retaliated against him under the employee protection provisions of Section 806 of the Corporate and Criminal Fraud

Accountability Act of 2002, Title VIII of the 2 Sarbanes-Oxley Act (SOX), as amended, and its implementing regulations.[1] After OSHA dismissed the complaint, Complainant requested a hearing with an ALJ.

Before the ALJ, Respondent filed a Motion to Dismiss arguing that it was not subject to SOX coverage. The ALJ determined that he could not assess Respondent's coverage based on the Motion to Dismiss, but stated that "principles of judicial economy require that I resolve the question whether Respondent is a 'covered person' under SOX before proceeding with any other aspect of this case."[2] Accordingly, the ALJ opened discovery "**limited** to the question whether Respondent is a 'covered person' under SOX."[3]

Complainant subsequently requested the ALJ issue a subpoena duces tecum and interrogatories to a third-party, Otis Worldwide Corporation. On January 20, 2026, the ALJ denied the request in an Order Denying Complainant's Motion for Issuance of Subpoena to Otis Worldwide Corporation (Order Denying Subpoena), stating that: (1) the subpoena "exceeds the scope of discovery permitted by" the ALJ's previous order limiting the scope of discovery, and (2) the ALJ did not have "the ability to issue a subpoena in this whistleblower case," citing the Board's decision in *Fagan v. Department of the Navy*, ARB No. 2023-0006, ALJ No. 2021-CER-00001 (ARB Feb. 28, 2024).[4] The ALJ later denied Complainant's request to reconsider the Order Denying Subpoena.

Complainant also sought discovery from Respondent, but was dissatisfied with Respondent's responses (or lack thereof). Consequently, Complainant filed motions asking the ALJ to, among other things, sanction Respondent for alleged discovery abuses, deem facts admitted, and make adverse inferences.

On February 9, 2026, the ALJ issued an Order Denying Complainant's January 25, 2026 "Motion for Sanctions for Discovery Abuse, to Deem Facts Admitted, and for Adverse Inferences of Case-Dispositive Relief on the 'Covered

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

2 Order Permitting Limited Discovery and Establishing Schedule for Further Briefing on Respondent's Motion to Dismiss at 2-3.

3 *Id.* at 3 (emphasis original).

4 Order Denying Subpoena at 2.

Person' Issue" (Order Denying Motion). The ALJ denied Complainant's motions, stating:

> Having reviewed all of these materials, I find that none of the information sought by Complainant in his Interrogatories and Document Production Requests is in any way relevant to the inquiry before me at this stage of the litigation: whether Respondent is a covered entity under SOX. As that is the only question on which I have allowed discovery to proceed at this stage of the case, I find Respondent's objections to the discovery requests to be well-taken, and I **SUSTAIN** Respondent's objections. Treating Complainant's Motion for Discovery Sanctions as a Motion to Compel Discovery, I **DENY** the Motion to Compel. I also **DENY** all the other relief sought by Complainant in his January 25, 2026 [motion].[5]

Complainant subsequently filed motions requesting the ALJ certify the following seven issues for interlocutory review to the Administrative Review Board (ARB or Board):

> (1) Whether an Administrative Law Judge adjudicating a whistleblower complaint under the Sarbanes-Oxley Act, 18 U.S.C. § 1514A, possesses the inherent or implied authority to issue a subpoena duces tecum to the principal publicly traded company (Otis Worldwide Corporation) in order to obtain evidence essential to determine the threshold jurisdictional issue of whether the respondent (ThyssenKrupp Elevator) is a 'covered person' as an 'agent,' 'contractor,' or 'affiliate' under the statute. . . .
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> (2) Whether an Administrative Law Judge commits reversible error, abuses discretion, and abdicates a non-discretionary duty by: (a) recaptioning a motion for sanctions under [Federal Rules of Civil Procedure (FRCP)] 37(b)—filed due to a party's total, boilerplate refusal to comply with a discovery order—as a FRCP 37(a) motion to

[5] Order Denying Motion at 5 (emphasis original).

compel; and (b) thereby evading the mandatory, multi-factor sanctions analysis for willful discovery abuse required by binding ARB precedent in Keller v. Pittsburgh Baptist Church, ARB No. 2025-0008, as applied to patterns of obstruction in O'Reilly v. Industrial Automation, Inc., ARB No. 2025-0024, and Mejia v. JP Morgan Chase & Co., ARB No. 12-060.

(3) Whether, under FRCP 36(a)(3) and binding precedent (Marchand v. Mercy Medical Center, 22 F.3d 933, 936 (9th Cir. 1994); St. Paul Reinsurance Co. v. Commercial Financial Corp., 198 F.R.D. 508, 513 (N.D. Iowa 2000)), a party's uniform boilerplate objection to every discovery request after a court has ordered discovery on a specific issue constitutes a failure to serve a proper objection "addressed to the matter," thereby mandating that all requested matters be deemed admitted as a matter of law, and whether such deemed admissions establish genuine issues of material fact precluding summary decision under FRCP 56.

(4) Whether an Administrative Law Judge's scheduling order—which compels a pro se complainant to oppose a dispositive summary decision motion without any discovery under FRCP 56(d) while simultaneously barring him from filing a substantive reply to the obstructive respondent's defense of its own contempt—creates a structural due process violation that (a) denies the "meaningful opportunity to be heard" guaranteed by the Fifth Amendment, and (b) constitutes a per se violation of FRCP 56(d) and the spoliation doctrine by failing to draw the adverse inference that withheld evidence is unfavorable, as required by Bashir v. Amtrak, 119 F.3d 929, 931 (11th Cir. 1997), thereby engaging in arbitrary economic discrimination violating the Fifth Amendment and SOX's remedial purpose under Lawson v. FMR LLC, 571 U.S. 429, 436 (2014).

(5) Whether, under the ARB's decision in Dietz v. Cypress Semiconductor Corp., a complainant's disclosures about conduct that is reasonably believed to implicate interstate mail, wire, or bank fraud constitute protected activity under SOX, even if the underlying alleged violation is of state law and the complainant does not use specific "magic words" like "fraud" in the report. Or restated - Protected Activity - The Scope of the "Reasonable Belief" Standard. Whether, under Dietz v. Cypress Semiconductor Corp., a complainant's internal reports about corporate conduct constitute protected activity under the SOX whistleblower provision if they describe a course of conduct that reasonably implicates federal mail or wire fraud statutes—even if the reports focus on a predicate violation of another law (such as state wage laws or, as here, falsified safety records or fraudulent billing), and even if the complainant does not use the specific word "fraud" or cite the federal fraud statutes.

(6) Whether, under the ARB's controlling decision in Spinner v. David Landau and Associates, LLC, a privately held company that provides services to or functions as part of an integrated enterprise with a publicly traded company qualifies as a "contractor, subcontractor, or agent" of that public company under 18 U.S.C. § 1514A(a), thereby subjecting it to SOX's whistleblower provisions for reports about fraud affecting the public company.

(7) Whether an Administrative Law Judge commits clear error and abuses discretion by finding that discovery requests for a respondent's (a) master agreements with a publicly traded company, (b) financial statements, and (c) joint trust governance documents are "in no way relevant" to determining if the respondent is a "covered person" under the functional test mandated by Lawson v. FMR LLC, 571 U.S. 429 (2014).[6]

[6] Order Denying Motions for Certification of Issues for Interlocutory Appeal at 5-7.

On February 27, 2026, the ALJ issued an Order Denying Motions for Certification of Issues for Interlocutory Appeal. Consistent with ARB precedent, the ALJ analyzed whether the issues presented by Complainant merited certification under 28 U.S.C. § 1292(b), which provides that a tribunal may certify an interlocutory order for immediate appeal when it is "of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation."[7]

Regarding issue (1), the ALJ found there was no substantial ground for difference of opinion.[8] Regarding issues (2), (3), (4), and (7), the ALJ observed that the issues "largely arise out of my management of the very limited scope of discovery I have allowed as to the very narrow threshold question raised by Respondent's Motion to Dismiss."[9] The ALJ found that "none of these discovery issues involve a controlling issue of law," that "there are no substantial grounds for differences of opinion," and that "immediate appeal of these issues will not materially advance the ultimate termination of the litigation."[10] Regarding issues (5) and (6), the ALJ said they were "question[s] I may consider in the future," and "I have made no decision thus far which touches on [these issues]." Thus, "interlocutory review of [these issues] would interfere with the orderly termination of the litigation."[11]

On March 19, 2026, Complainant filed with the Board: (1) Appellant-Complainants First ARB Petition for Leave to Appeal, for Interlocutory Review, and, in the Alternative, Petition for Extraordinary Relief Under 29 C.F.R. § 18.96 (First Petition), and (2) Appellant-Complainants Second ARB Petition for Leave to Appeal, for Interlocutory Review, and, in the Alternative, Petition for Extraordinary Relief Under 29 C.F.R. § 18.96 (Second Petition).[12] With the Second Petition, Complainant also filed: (1) Appellant-Complainants Declaration of Pete R. Szmurlo in Support of Petitions for Interlocutory Review and Extraordinary Relief, and (2)

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[7] *Id*. at 8.

[8] *Id*.

[9] *Id*. at 9.

[10] *Id*.

[11] *Id*.

[12] Although Complainant has referred to three petitions for review filed with the Board, these are the only two petitions the Board received and docketed as appeals.

Appellant-Complainants Memorandum of Law in Support of First and Second (Both) ARB Petition for Leave to Appeal, for Interlocutory Review, and, in the Alternative, Petition for Extraordinary Relief Under 29 C.F.R. § 18.96 (Memorandum in Support of Petitions).[13]

In Complainant's First Petition, largely mirroring issue (1) for which the ALJ denied certification, he asked the Board to "reverse the ALJ's underlying Orders of January 20 and 22, 2026, which denied Complainant's subpoena duces tecum to Otis Worldwide Corporation."[14] In Complainant's Second Petition, he challenged

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[13] The petitions were docketed as appeals and assigned separate case numbers: ARB Nos. 2026-0025 and 2026-0026. Complainant has also objected to the ALJ's February 6, 2026 Briefing Order and the ALJ's February 9, 2026 Order Denying Sanctions and Sustaining Respondent's Objections. Complainant's Response in Support of First Petition for Interlocutory Review: The Subpoena Denial, the Ultra Vires Doctrine, and the Structural Nullification of SOX (Response in Support of First Petition) at 21; Complainant's Response in Support of Second Petition for Interlocutory Review: Discovery Sanctions, Deemed Admissions, the Ultra Vires Doctrine, and the ALJ's Abdication of Ministerial Duties (Response in Support of Second Petition) at 19. In the Memorandum in Support of Appeals, Complainant stated that "[t]his Petition incorporates by reference the Emergency Petition for Writ of Mandamus for Recusal of Administrative Law Judge Steven D. Bell, for Assignment to Impartial Tribunal, and for Preservation of Record for Future Tort Claims, filed concurrently herewith, and the Second ARB Petition for Leave to Appeal regarding discovery sanctions and relevance." Memorandum in Support of Petitions at 5. However, (1) this document Complainant referred to has not been filed with the Board, and (2) in relation to Complainant's many references to mandamus in his briefing, in his Response in Support of Second Petition and in direct response to Respondent's assertion that the Board does not have authority to issue writs of mandamus, Complainant stated "Complainant seeks interlocutory review and reversal, not mandamus as such." Response in Support of Second Petition at 17. Given this statement, we deem Complainant to have abandoned any petition for writ of mandamus to the Board.

[14] First Petition at 1. Also with respect to ARB No. 2026-0026, Complainant has filed with the Board: (1) on April 27, 2026, a Motion for 60-day Extension of Time to File Response Briefs Due to Food Insecurity, Pro Se Hardships, and Multiple Concurrent Proceedings; and in the Alternative, Motion for 30-Day Schedule Adjustment, and a Proposed Order Granting Extension of Time; (2) on April 28, 2026, Complainant's Response in Support of First Petition; (3) on April 29, 2026, a Leave to File Declaration of Pete Szmurlo in Support of First Impression Case, Pending Interlocutory Appeal and Notice of Ongoing Shareholder Fraud, Perjury, Rule 404(b) Evidence, De Novo Errors of Law, and New Precedent Sidak v. U.S. International Trade Commission; (4) on April 29, 2026, a second copy of Complainant's Response in Support of First Petition; (5) on April 30, 2026, Complainant's Supplemental Memorandum on the Convergence of Interlocutory Review and Mandamus Standards, and the Board's Discretion (Supplemental Memorandum); and (6) on May 18, 2026, Complainant's Supplemental and Corrected Joint Response in Support of Both Petitions for Interlocutory Review.

other discovery and procedural orders, largely mirroring issues (2) through (7) for which the ALJ denied certification.[15]

DISCUSSION

As Complainant recognized in his Petitions, because the ALJ has not yet issued a decision fully disposing of all claims in Complainant's complaint, the First and Second Petitions are for interlocutory review (i.e., review of non-final decisions).[16] The Board's delegated authority includes the consideration and disposition of interlocutory appeals "in exceptional circumstances, provided such review is not prohibited by statute."[17] When a party seeks interlocutory review of an ALJ's non-final order, the Board has elected to look to the interlocutory review procedures providing for certification of issues involving a controlling question of law as set forth in 28 U.S.C. § 1292(b).[18]

The first step in the interlocutory appeal process is for the ALJ to certify the interlocutory issue for appellate review as provided in 28 U.S.C. § 1292(b).[19] As noted above, the ALJ did not certify Complainant's appeals under 28 U.S.C.

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[15] Second Petition at 9-11. Also with respect to ARB No. 2026-0025, Complainant has filed with the Board: (1) on April 27, 2026, a Motion for 60-day Extension of Time to File Response Briefs Due to Food Insecurity, Pro Se Hardships, and Multiple Concurrent Proceedings; and in the Alternative, Motion for 30-Day Schedule Adjustment, and a Proposed Order Granting Extension of Time; (2) on April 29, 2026, Complainant's Sua Sponte Notice of Correction Regarding Fabricated Citations in Second Petition Response; (3) on April 29, 2026, a Leave to File Declaration of Pete Szmurlo in Support of First Impression Case, Pending Interlocutory Appeal and Notice of Ongoing Shareholder Fraud, Perjury, Rule 404(b) Evidence, De Novo Errors of Law, and New Precedent Sidak v. U.S. International Trade Commission; (4) on April 29, 2026, the Response in Support of Second Petition; (5) on April 30, 2026, Supplemental Memorandum; and (6) on May 18, 2026, Complainant's Supplemental and Corrected Joint Response in Support of Both Petitions for Interlocutory Review.

[16] *See Gloss v. Tata Chems. N. Am.*, ARB No. 2022-0054, ALJ No. 2020-CAA-00008, slip op. at 2 (ARB Sept. 20, 2022).

[17] Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13186, 13187 ¶(5)(b)(69) (Mar. 6, 2020).

[18] *Powers v. Pinnacle Airlines, Inc.*, ARB No. 2005-0138, ALJ No. 2005-SOX-00065, slip op. at 5-6 (ARB Oct. 31, 2005) (citations omitted).

[19] *Kim v. SK Hynix Memory Sols.*, ARB No. 2020-0020, ALJ No. 2019-SOX-00012, slip op. at 4 (ARB Jan. 28, 2020) (citations omitted).

§ 1292(b) in this case. However, even if a party has failed to obtain interlocutory certification, the Board may still consider reviewing an interlocutory order that meets the "collateral order" exception, which 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."[20] To fall within the "collateral order" exception first recognized in *Cohen*,[21] 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.[22] This exception is "strictly construe[d]" to avoid "unnecessarily protracte[d] litigation."[23] If the ALJ's Order "fails to satisfy any one of these requirements, it is not appealable under the collateral-order exception to § 1291."[24]

In his appeals of the ALJ's orders, Complainant presents several issues which he argues are separate from and collateral to the remaining claims before the ALJ.[25] First, he argues that the orders conclusively determined and finally decided whether he can obtain the discovery and sanctions tools he needs to prove SOX coverage.[26] Second, he asserts that they resolve important issues separate from the merits, framing the issues as (1) whether the ALJ has subpoena authority, (2) whether the ALJ may recaption a sanctions motion, (3) whether deemed admissions and adverse inferences apply, (4) whether the ALJ may deny discovery after admitting that discovery is necessary, and (5) whether the ALJ's actions were

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20 *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949).

21 *Id.*

22 *Priddle v. United Airlines, Inc.*, ARB No. 2021-0064, ALJ No. 2020-AIR-00013, slip op. at 7 (ARB Jan. 26, 2022) (citation omitted).

23 *Id.* (citations omitted).

24 *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 276 (1988); *accord Kossen v. Empire Airlines*, ARB No. 2021-0017, ALJ No. 2019-AIR-00022, slip op. at 2 (ARB Feb. 25, 2021).

25 Complainant has used artificial intelligence (AI) in the preparation of his briefs in this matter and filed a Sua Sponte Notice of Correction Regarding Fabricated Citations in Second Petition Response to correct some citations that he could not verify.

26 Response in Support of First Petition at 11; Response in Support of Second Petition at 16; Supplemental Memorandum at 6-7.

ultra vires or violated ministerial duties.[27] Third, he argues that the ALJ orders are unreviewable after final judgment because (1) the evidence is perishable and Respondent has exclusive control over evidence and a history of falsifying records, (2) Complainant is experiencing irreparable harm including food insecurity combined with being indigent and his pro se status, (3) "the structural integrity of SOX is at stake" because "[i]f an ALJ can admit discovery is necessary, order it, and then deny every tool for obtaining it, no SOX complainant can ever prove coverage," (4) Complainant's professional reputation is being destroyed by contradictory sworn statements Respondent has lodged with government agencies, and (5) the ALJ's orders are ultra vires, void, and contrary to Supreme Court precedent, meaning they can be challenged without waiting for final agency action.[28] In essence, Complainant's argument is that the collateral order exception applies because the challenged discovery, subpoena, and sanctions rulings by the ALJ created an unfair proceeding, are legally distinct from the merits, and cannot be meaningfully remedied after a final judgment. Additionally, Complainant asserts that even if the collateral order doctrine were not satisfied, the Board retains "discretionary authority to review interlocutory rulings in exceptional circumstances," and argues that exceptional circumstances exist.[29]

In response, Respondent argues that Complainant's appeals do not satisfy the collateral order test. Respondent argues that the ALJ did not issue an order addressing or determining several of the issues and questions raised by Complainant, including those concerning whether Respondent is a covered person under the Act.[30] Respondent argues that the ALJ's orders are not effectively unreviewable on appeal from a final judgment and that "[i]t is senseless to allow such piecemeal appeal that would only burden the efficacious administration of justice and unnecessarily protract litigation at this point when Complainant will have the opportunity to make such requests for appeal upon final judgment."[31] Finally, Respondent argues that the Board lacks authority to grant Complainant's

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[27] Response in Support of First Petition at 1, 11; Response in Support of Second Petition at 2-3, 16-18; Supplemental Memorandum at 7-8.

[28] Response in Support of First Petition at 11; Response in Support of Second Petition at 16-18; Supplemental Memorandum at 7-9.

[29] Response in Support of First Petition at 12-13; Response in Support of Second Petition at 17-18; Supplemental Memorandum at 9-10.

[30] Respondent TK Elevator Corporation's Brief in Response to Complainant's First and Second Petitions at 7-8.

[31] *Id.* at 10.

request for extraordinary relief, including issuing a writ of mandamus and other relief requested, because the Board only has such authority as expressly delegated by the Secretary.[32]

Upon reviewing all of the parties' arguments on appeal, we hold that the ALJ's orders fail to satisfy the third *Cohen* factor that the orders would be effectively unreviewable on appeal from a final judgment and deny interlocutory review. 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."[33] 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.[34]

The claims that Complainant identifies for review are all fully reviewable upon appeal of the final decision of the ALJ. In essence, Complainant argues that these issues will be unreviewable on appeal from a final decision by the ALJ because delayed review would be inadequate and lost opportunities in discovery would arise. However, we discern no reason why the Board could not review the ALJ's decisions on these issues after the ALJ issues a decision.

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32 *Id.* at 10-11.

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

34 *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. Apr. 2026 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.") (citations omitted).

With respect to the ALJ's subpoena authority, "the ARB has previously decided subpoena authority issues after a hearing on the merits and a judgment has been issued by the ALJ as part of the review of a final agency decision."[35] And as the Board explained in *Goldstar*, "[a]s long as the claim can be addressed by other means, the matter is not appropriate for interlocutory appeal."[36]

With respect to Complainant's argument that the ALJ abdicated a non-discretionary duty and otherwise acted in an ultra vires manner by recaptioning a motion for sanctions under FRCP 37(b) as a FRCP 37(a) motion to compel (and other acts) and evading the mandatory, multi-factor sanctions analysis for willful discovery abuse required by ARB precedent, it is an argument that is difficult to follow but boils down to issues involving pre-hearing discovery, evidentiary matters, and sanctions, all matters soundly within the ALJ's discretion.[37] Indeed as stated in *Keller v. Pittsburgh Baptist Church*, a case heavily cited by Complainant, "[t]he Board reviews ALJ determinations on procedural issues, evidentiary rulings, and sanctions under an abuse of discretion standard," which are all reviewable on final appeal.[38] With respect to these and Complainant's other allegations of error

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35 *Adm'r, Wage & Hour Div., U.S. Dep't of Lab. v. Goldstar Amusements, Inc.*, ARB No. 2022-0027, ALJ Nos. 20021-TNE-00027, -00028, slip op. at 7 (ARB Sept. 30, 2022) (citing *Childers v. Carolina Power & Light Co.*, ARB No. 1998-0077, ALJ No. 1997-ERA-00032, slip op. at 2 (ARB Dec. 29, 2000); *Adm'r, Wage & Hour Div., U.S. Dep't of Lab. v. Integrated Informatics, Inc.*, ARB No. 2008-0127, ALJ No. 2007-LCA-00026, slip op. at 4 (ARB Jan. 31, 2011)).

36 *Id.* at 8.

37 Complainant argues that the ALJ's actions are void as ultra vires under *Sidak v. U.S. Int'l Trade Comm'n*, 174 F.4th 151 (D.C. Cir. 2026). His argument appears to be that *Lawson v. FMR LLC*, 571 U.S. 436, requires an examination of operational control for whether an entity is a covered person under SOX, so the ALJ's determination that certain documents he wants in discovery are not relevant to coverage are ultra vires and thus void. Generally, a judge acts ultra vires when the judge acts outside the scope of his or her lawful jurisdiction or authority. *See Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978) ("A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'"). Even upon a loose reading, *Sidak's* holding does alter our analysis because in *Sidak*, the ALJ order at issue was "an unconstitutionally structured agency [order] in violation of the Appointments Clause" that the ALJ lacked the authority to issue. *Sidak*, 174 F.4th 151. The issues in *Sidak* are a far cry from those presented in this case.

38 *Keller v. Pittsburgh Baptist Church*, ARB No. 2025-0008, ALJ No. 2023-TAX-00012, slip op. at 6 (ARB July 30, 2025) (citation omitted). Here, the ALJ has discretion over determinations of relevance in discovery and an abuse of discretion as to relevance in

regarding discovery, we note that "[c]ourts rarely grant interlocutory appeal of discovery orders."[39] And specifically regarding Complainant's evidentiary concerns, we note that the parties have a duty to preserve evidence in their control that is relevant to Complainant's SOX claims.[40] Furthermore, even if spoliation occurs, the ALJ has the ability to issue sanctions, including adverse evidentiary determinations, preclusion of the admission of evidence, dismissal, or default judgment.[41] Parties can appeal the ALJ's decision to the Board.

Complainant has also argued that his ability to litigate is being destroyed because he is indigent and is experiencing food insecurity and that his professional reputation is being destroyed. As unfortunate as these circumstances are, and as sympathetic as we are to them, it is not a reason that this appeal should be heard at this stage where it is reviewable on appeal after a decision by the ALJ.

Therefore, because the ALJ's orders do not satisfy the third *Cohen* factor, these appeals do not fall within the collateral order exception. Additionally, even given the Board's discretionary authority to review interlocutory appeals in exceptional circumstances, we conclude that exceptional circumstances do not exist and decline to accept interlocutory review.[42] None of Complainant's arguments (all of which we have reviewed and considered, whether specifically discussed in this

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discovery would not make the ALJ's determination ultra vires or void. Again, the ALJ's decision could be reviewed on appeal of a final decision.

[39] *Goldstar Amusements*, ARB No. 2022-0027, slip op. at 8 (citing *Mohawk Indus.*, 558 U.S. at 107 (in general, discovery disputes implicate no "substantial public interest" that overcomes finality principles)); *see also Fernandez v. Navistar Int'l Corp.*, ARB No. 2010-0035, ALJ No. 2009-SOX-00043, slip op. at 4-5 (ARB Mar. 4, 2010) (adopting *Mohawk* test for Board proceedings); Wright, *supra* note 34, at § 3914.23 ("Adhering to these concerns, courts routinely dismiss [interlocutory] appeals from orders granting discovery, denying discovery, granting protective orders, granting a protective order narrower than requested, denying protective orders, refusing to modify protective orders, or dealing with the procedures for conducting discovery.") (citations omitted).

[40] *See Joseph v. Carnes*, 566 F. App'x 530, 535 (7th Cir. 2014) (explaining that a party had "the duty to preserve evidence in their possession that is relevant to the plaintiffs' . . . claims" and that "[f]ailure to do so would constitute spoliation of evidence.") (citing *Trask-Morton v. Motel 6 Operating L.P.,* 534 F.3d 672, 681 (7th Cir. 2008); *MacNeil Auto. Prods., Ltd. v. Cannon Auto. Ltd.,* 715 F.Supp.2d 786, 800 (N.D.Ill. 2010); *Smith v. United States,* 293 F.3d 984, 988 (7th Cir. 2002)).

[41] *See Jenkins v. U.S. Env't Prot. Agency*, ARB No. 2015-0046, ALJ No. 2011-CAA-00003, slip op. at 17-18 (ARB Mar. 1, 2018) (internal quotations and citations omitted).

[42] *See* Secretary's Order No. 01-2020, 85 Fed. Reg. 13186 at 13187 ¶(5)(b)(69).

decision or not) have persuaded us that the rights he asserts are too important to be denied review and too independent of the cause itself so as to require immediate interlocutory review because the rights at issue can be adequately vindicated by other means after an ALJ's final decision. We thus **DISMISS** Complainant's interlocutory appeals.[43]

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge

[43] Complainant has also requested that this matter be reassigned to a different ALJ and that the Board make various orders for ALJ action on remand. Our decision is limited to whether Complainant's appeals should be taken up for interlocutory review. We have determined that they should not, and thus we dismiss these interlocutory appeals. We note, however, that the question of whether an ALJ should grant a motion to recuse himself is reviewable on appeal of the final decision on the merits issued by an ALJ. *See Erickson v. U.S. Env'l Prot. Agency*, ARB No. 2004-0071, ALJ No. 2004-CAA-00007, slip op. at 3 (ARB Apr. 30, 2004) ("[T]he question of whether or not an administrative law judge should have disqualified himself is reviewable on appeal with the decision on the merits issued by an administrative law judge."); *see also Kossen v. Asia Pac. Airlines*, ARB No. 2023-0047, ALJ No. 2023-AIR-00001, slip op. at 14 (ARB May 30, 2025) ("An ALJ may recuse him or herself if their impartiality might reasonably be questioned or they have a personal bias or prejudice concerning a party. The Board presumes ALJs to be impartial, and the party moving for recusal has a substantial burden to prove otherwise. Generally, unfavorable rulings and possible legal errors are insufficient to prove bias.") (internal quotations and citations omitted).