



IN THE MATTER OF:

NAOMI REITZ,

ARB CASE NO. 2026-0039

COMPLAINANT,

ALJ CASE NO. 2023-SOX-00028

ALJ STEWART F. ALFORD

v.

DATE: July 2, 2026

MODERNA, INC.,

RESPONDENT.

Appearances:

For the Complainant:

Kimberly S. Courtney, Esq.; *Higher Bar Law*; Washington, District of Columbia

For the Respondent:

Thomas A. Linthorst, Esq.; *Morgan, Lewis & Bockius LLP*; Princeton, New Jersey

Before KAPLAN and BURRELL, Administrative Appeals Judges

DECISION AND ORDER

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 Complainant Naomi Reitz appeals the decision of a United States Department of Labor Administrative Law Judge (ALJ) dismissing her claim against Respondent Moderna, Inc. For the reasons below, we dismiss Complainant's appeal because it is untimely.

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

BACKGROUND

On April 22, 2026, an ALJ issued an Order Dismissing Matter, dismissing Complainant’s complaint as a sanction for her failure to comply with the ALJ’s orders to participate in discovery and sit for a deposition. To appeal the Order Dismissing Matter, Complainant was required to file a Petition for Review with the Administrative Review Board (ARB or Board) within 14 days of the date of the ALJ’s decision—i.e., by May 6, 2026.² Complainant did not file her Petition for Review by the deadline.

On May 14, 2026—eight days after the appeal deadline—Complainant filed a Petition for Review, Application for Waiver, and Request for Equitable Tolling (Petition) with the Board. In the Petition, Complainant recognized that her appeal was late, but “applie[d] for a waiver of the timeliness rule pursuant to 29 C.F.R. § 1980.115,”³ and asserted that “equitable tolling and waiver are justified” to excuse her untimely filing.⁴

On May 19, 2026, Respondent filed an Opposition to Complainant’s Petition for Review, Application for Waiver, and Request for Equitable Tolling. Respondent argued that Complainant’s arguments in her Petition were insufficient to excuse her late filing under applicable ARB precedent.⁵ Respondent also argued that there was no reason to grant Complainant a waiver of the timeliness rules under 29 C.F.R. § 1980.115.⁶

On May 28, 2026, the Board issued a Notice of Appeal and Order to Show Cause, directing Complainant to file a brief explaining why the Board should not dismiss this appeal as untimely. Complainant filed a Brief in Response to Order to Show Cause, and Motion for Leave to File New Evidence *in Camera* on June 10, 2026. Respondent filed an Opposition to Complainant’s Response to Order to Show Cause and Motion for Leave to File New Evidence *in Camera* on June 22, 2026.

² See 29 C.F.R. § 1980.110(a) (“A petition must be filed within 14 days of the date of the decision of the ALJ.”).

³ Petition at 1.

⁴ *Id.* at 3.

⁵ Opposition to Complainant’s Petition for Review, Application for Waiver, and Request for Equitable Tolling at 1-3.

⁶ *Id.* at 3-4.

DISCUSSION

Under the applicable regulations, Complainant was required to file a petition for review with the Board by May 6, 2026.⁷ Complainant did not file her Petition until May 14, 2026. Therefore, her appeal was untimely and is subject to dismissal.

The time to file a petition with the ARB is not jurisdictional and, therefore, is subject to equitable modification, including through equitable tolling and equitable estoppel.⁸ Equitable tolling refers to a set of circumstances equitably excusing the complainant's inability to meet a deadline, such as when the movant has raised the precise statutory claim in issue but has done so in the wrong forum, when the movant has in some extraordinary way been prevented from filing, or when the movant has some excusable ignorance of the respondent's discriminatory act.⁹ Equitable tolling is a rare and "extraordinary measure that applies only when plaintiff is prevented from filing despite exercising that level of diligence which could reasonably be expected in the circumstances."¹⁰ Equitable estoppel refers to the employer or other respondents' conduct that might have induced the complainant to refrain from exercising her rights in a timely fashion.¹¹

The Board has recognized that "equitable relief from limitations periods is 'typically extended . . . only sparingly.'"¹² The party seeking equitable relief bears the burden of establishing the need to apply equitable modification principles.¹³ Importantly, a Complainant pursuing a whistleblower retaliation claim is responsible for determining which deadlines apply to her case and for meeting those deadlines.¹⁴ As the Board has stated many times before, "ignorance of the law is no

⁷ See 29 C.F.R. § 1980.110(a).

⁸ *Martin v. Paragon Foods*, ARB No. 2022-0058, ALJ No. 2021-FDA-00001, slip op. at 7-8 (ARB June 8, 2023); *Boles v. United Pac. R.R. Co.*, ARB No. 2021-0061, ALJ No. 2020-FRS-00101, slip op. at 2 (ARB Nov. 1, 2021) (citation omitted).

⁹ *Martin*, ARB No. 2022-008, slip op. at 9 (citations omitted).

¹⁰ *Id.* (internal quotations and citations omitted).

¹¹ *Id.* at 8.

¹² *Woods v. Boeing-South Carolina*, ARB No. 2011-0067, ALJ No. 2011-AIR-00009, slip op. at 8 (ARB Dec. 10, 2012) (quoting *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990)).

¹³ *Id.* (citation omitted).

¹⁴ *Martin*, ARB No. 2022-0058, slip op. at 6.

excuse” for missing a filing deadline.¹⁵ Likewise, “equitable tolling is generally not appropriate when a complainant is represented by counsel because counsel is presumptively aware of whatever legal recourse may be available to [his or her] client,” and “attorney error does not constitute an extraordinary factor because ultimately clients are accountable for the acts and omissions of their attorneys.”¹⁶ Applying these principles and standards, we find no basis to excuse Complainant’s untimely Petition in this case.

Complainant first contends that she is entitled to equitable relief from the filing deadline because the ALJ did not include a Notice of Appeal Rights with the Order Dismissing Matter, creating a “genuine misunderstanding regarding” the applicable deadlines.¹⁷ The Board has held several times that an ALJ’s failure to include a Notice of Appeal rights with his decision does not constitute grounds for equitably tolling the limitations period.¹⁸ Although Notices of Appeal Rights may be helpful to litigants, ALJs are not required by statute or regulation to include a Notice of Appeal Rights with their decisions or advise parties of the appeal deadline. Litigants, especially those represented by counsel, are ultimately responsible for determining and meeting applicable deadlines.¹⁹ Notably, Complainant’s counsel has not explained what efforts she took to familiarize herself with the applicable

¹⁵ *Id.* (quoting *Warner v. Xcel Energy*, ARB No. 2008-0112, ALJ No. 2008-ERA-00002, slip op. at 8 (ARB Mar. 29, 2010)).

¹⁶ *Madison v. Kenco Logistics*, ARB No. 2018-0018, ALJ No. 2016-FDA-00004, slip op. at 3 (ARB Feb. 15, 2018) (internal quotations and citations omitted).

¹⁷ Petition at 3.

¹⁸ *Boles*, ARB No. 2021-0061, slip op. at 4-5; *Jaludi v. Citigroup, Inc.*, ARB No. 2021-0053, ALJ No. 2021-SOX-00014, slip op. at 3 (ARB Aug. 25, 2021); *Swinney v. Fluor Corp.*, ARB No. 2015-0044, ALJ No. 2014-SOX-00041, slip op. at 3 (ARB June 11, 2015); *Santamaria v. U.S. Env’t Prot. Agency*, ARB No. 2005-0023, ALJ No. 2004-ERA-00025, slip op. at 4-5 (ARB Mar. 31, 2005). We note that the complainants in these cases appeared before the Board without legal representation. In this case, Complainant is represented by counsel and counsel should have familiarized herself with the applicable filing deadline, even in the absence of a Notice of Appeal Rights. *See Madison*, ARB No. 2018-0018, slip op. at 3 (“[C]ounsel is presumptively aware of whatever legal recourse may be available to [his or her] client.”) (internal quotations and citation omitted); *see also Patino v. Birken Mfg. Co.*, ARB No. 2009-0054, ALJ No. 2005-AIR-00023, slip op. at 4 (ARB Nov. 24, 2009) (“[U]ltimately, clients are accountable for the acts and omissions of their attorneys.”) (internal quotations and citation omitted).

¹⁹ *Martin*, ARB No. 2022-0058, slip op. at 6.

rules—which are readily available online²⁰—or why she was confused about the deadlines that applied to Complainant’s case.

Complainant next asserts that she filed a Motion for Reconsideration with the ALJ on May 11, 2026, which the ALJ denied on June 3, 2026. Complainant argues that she “operated under the reasonable, albeit mistaken, belief that a Motion for Reconsideration (‘MFR’) would stay the appeal period and that the MFR was not subject to a strict 10-day window.”²¹

To be sure, a *timely* motion for reconsideration tolls the deadline to file a petition for review with the ARB.²² However, an *untimely* motion for reconsideration does not delay the start of the appeal period.²³ In this case, Complainant’s motion for reconsideration was not timely. Under the Office of Administrative Law Judges Rules of Practice and Procedure, a motion for reconsideration must be filed within 10 days after service of the decision—in this case, by May 4, 2026.²⁴ Complainant did not file her motion for reconsideration until May 11, 2026—seven days after the deadline.²⁵ Thus, the Motion for Reconsideration did not toll the filing deadline.

Complainant’s mistaken belief that her untimely Motion for Reconsideration would toll the deadline to appeal also was not “reasonable” and does not excuse her untimely Petition. It was incumbent on Complainant’s counsel to familiarize herself

²⁰ The OALJ Rules of Practice and Procedure, including the rule related to Motions for Reconsideration, are available at https://www.dol.gov/sites/dolgov/files/oalj/PUBLIC/RULES_OF_PRACTICE/REFERENCES/REFERENCE_WORKS/OALJ_RULES_OF_PRACTICE_AND_PROCEDURE_2015_WITH_CORRECTIONS.pdf. The SOX regulation regarding filing petitions for review with the ARB is available at <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XVII/part-1980/subpart-B/section-1980.110>.

²¹ Complainant-Appellant’s Brief in Response to Order to Show Cause, and Motion for Leave to File New Evidence in Camera (Comp. Br.) at 5.

²² *Phox v. The Savoy at 21c*, ARB No. 2021-0057, ALJ No. 2019-FDA-00014, slip op. at 2-3 (ARB Jan. 6, 2022) (citations omitted).

²³ *Id.* at 3 (citations omitted).

²⁴ 29 C.F.R. § 18.93. The tenth day fell on Saturday, May 2, 2026. Therefore, the motion for reconsideration was due the next business day—Monday, May 4. *See id.* § 18.32(a)(1)(iii).

²⁵ Accordingly, the ALJ denied the motion for reconsideration as untimely in an order dated June 3, 2026.

with the applicable rules and the regulations concerning motions for reconsideration and petitions for review. We reiterate that “ignorance of the law is no excuse” for missing a filing deadline, and counsel is “presumptively aware of whatever legal recourse may be available to [his or her] client.”²⁶ Once again, Complainant’s counsel has not explained why she was confused about the deadlines or what efforts she took to familiarize herself with the rules.²⁷

Next, Complainant argues that “strictly enforcing the procedural deadline . . . would permanently cement the ALJ’s fundamentally flawed” decision dismissing Complainant’s case.²⁸ She asserts that her refusal to participate in discovery or sit for a deposition—which prompted the ALJ to dismiss the case as a sanction—was “compelled by binding external legal constraints that rendered compliance legally impossible.”²⁹ She argues that this resulted in “legally mandated paralysis,” creating an “unprecedented environment of procedural confusion.”³⁰ To support this allegation, Complainant asks the Board for leave to file “new material regarding the specific external legal constraints” in camera and ex parte.³¹

²⁶ *Martin*, ARB No. 2022-0058, slip op. at 6 (citation omitted); *Madison*, ARB No. 2018-0018, slip op. at 3 (internal quotations and citations omitted). We also note that Complainant’s motion for reconsideration was not only filed after the deadline to file motions for reconsideration with the ALJ (in this case, May 4, 2026), but also after the deadline to file a petition for review with the Board (in this case, May 6, 2026). As Complainant would have it, a complainant could miss the filing deadline for both a motion for reconsideration and for filing a petition for review, file an untimely motion for reconsideration with the ALJ anyway, and then file an untimely petition for review with the ARB (before the ALJ rules on the untimely motion for reconsideration), and thereby somehow revive the expired deadline for filing the petition for review. We do not consider an interpretation of the rules that would provide such an end-around to the filing deadlines “reasonable.”

²⁷ Complainant’s assertion that her “confusion” over the motion for reconsideration deadline “was severely compounded by the ALJ’s omission of a Notice of Appeal Rights” is also unfounded. Comp. Br. at 1. As Respondent correctly points out, the Notice of Appeal Rights often provided by ALJs typically does not include information concerning motions for reconsideration or the deadlines related thereto, so could not have possibly aided (or hindered) Complainant’s understanding of reconsideration rules.

²⁸ *Id.* at 2.

²⁹ *Id.* at 4.

³⁰ *Id.* at 3.

³¹ *Id.* at 5-6.

Complainant’s arguments regarding the merits of her appeal and the ALJ’s alleged errors in dismissing her claim are not relevant to the issue of whether we should equitably modify the appeal deadline.³² Even if the supposed “legal constraints” limited Complainant’s ability to participate in discovery below, she has not alleged that, or explained how, the constraints limited her ability to file a timely appeal. Instead, as Respondent correctly observes, Complainant acknowledged that her delay in filing was due to her confusion as to the filing deadlines.³³ As we have explained, confusion is not a justifiable excuse for an untimely appeal.

Complainant also argues that Respondent should be equitably estopped from asserting timeliness as a defense. According to Complainant, Respondent “weaponized Complainant’s inability to participate in discovery against her, despite express knowledge of the fact that her participation was constrained by binding external legal forces.”³⁴ We reject this argument, too. Complainant has not argued that Respondent did or said anything regarding the motion for reconsideration or appeal deadlines that caused her to file late. Even if Respondent somehow took advantage of the “legal constraints” that limited Complainant’s ability to participate in discovery below, Complainant has not explained what that has to do with the confusion that resulted in Complainant’s late appeal.

³² See *Patino*, ARB No. 2009-0054, slip op. at 4-5 (rejecting argument that important questions of public interest underlying complainant’s claim should be considered when weighing whether to accept late filing; complainant “does not explain how judicial economy and the public interest in air safety implicate equitable tolling”); see also *Navy Chaplaincy v. U.S. Navy*, No. 23-5283, 2024 WL 5165606, at *3 (D.C. Cir. Dec. 19, 2024) (“Similarly, appellants’ arguments on the merits of their discrimination claims were not relevant to the sole issue on remand—equitable tolling—and were not properly before the district court.”); *Helton v. Sec’y for the Dep’t of Corrections*, 259 F.3d 1310, 1314-15 (11th Cir. 2001) (“The district court erroneously held that the *merits* of the case . . . ‘contribute[d] to the overall extraordinariness of the circumstances.’ . . . The ‘extraordinary circumstances’ standard [for equitable tolling] applied in this circuit focuses on the circumstances surrounding the late filing of the habeas petition, rather than the circumstances surrounding the underlying conviction. . . . The district court erred, therefore, in focusing on the merits of the case to justify equitable tolling.”). Accordingly, we deny Complainant’s request to file documents concerning the “legal constraints” in camera and under seal.

³³ See, e.g., Comp. Br. at 1 (“The delay in filing was not the result of a lack of diligence, but was rather caused by a genuine misunderstanding of the interplay between the deadlines for a Motion for Reconsideration and the appeal deadlines.”).

³⁴ *Id.* at 4.

Finally, Complainant argues that the Board should exercise its “independent discretion to waive the timeliness rule for special circumstances” under 29 C.F.R. § 1980.115.³⁵ That regulation provides: “In special circumstances not contemplated by the provisions of this part, or for good cause shown, the ALJ or the ARB on review may, upon application, after three days notice to all parties, waive any rule or issue any orders that justice or the administration of the Act requires.”

For all the reasons above, we do not find special circumstances or good cause to waive the appeal deadline. Complainant’s confusion regarding the deadline does not excuse her tardy filing and we see no reason to depart from well-established principles concerning timeliness in the circumstances of this case.

Accordingly, we **DISMISS** Complainant’s appeal.

SO ORDERED.

ELLIOT M. KAPLAN
Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge

³⁵ *Id.* at 3.