

U.S. Department of Labor

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



IN THE MATTER OF:

LORENZO LEWIS,

COMPLAINANT,

v.

**DEEPWELL ENERGY SERVICES,
LLC,**

RESPONDENT.

**ARB CASE NOS. 2025-0037
2025-0039
2025-0051**

**ALJ CASE NO. 2024-STA-00042
ALJ JOHN M. HERKE**

DATE: April 23, 2025

Appearances:

For the Complainant:

Lorenzo Lewis; *Pro Se*; Carrollton, Texas

For the Respondent:

**Amy Elaine Davis, Esq.; *Law Center of Amy E. Davis LLC*; Dallas,
Texas**

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

**ORDER OF CONSOLIDATION AND DENYING PETITIONS FOR
INTERLOCUTORY REVIEW**

PER CURIAM:

This case arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA or Act) and its implementing regulations.¹ Complainant filed a complaint with the Occupational Safety and

¹ 49 U.S.C. § 31105(a); 29 C.F.R. Part 1978 (2024).

Health Administration (OSHA) contending that Respondent terminated his employment in retaliation for complaining internally about Respondent's alleged failure to comply with Department of Transportation (DOT) and Federal Motor Carrier Safety Act (FMCSA) regulations.² OSHA dismissed Complainant's complaint, and Complainant appealed the dismissal to the Office of Administrative Law Judges (OALJ).³

On December 15, 2024, Complainant filed a Motion for Summary Decision.⁴ Complainant then filed several revisions and supplements to his Motion for Summary Decision in quick succession. On December 17, 2024, Complainant filed a Revised Motion for Summary Decision.⁵ On December 19, 2024, Complainant filed a Revised List of Undisputed Material Facts.⁶ On December 24, 2024, Complainant filed a Second Revised Motion for Summary Decision with a revised Sworn Affidavit.⁷ On January 5, 2024, Complainant filed a Memorandum of Points and Authorities Pursuant to 29 C.F.R. § 18.33(c)(4) with another Revised List of Undisputed Material Facts.⁸

On January 6, 2025, a United States Department of Labor Administrative Law Judge (ALJ) issued a Procedural Order Limiting Further Filings Relative to Complainant's Motion for Summary Decision (Procedural Order). The Procedural Order observed Complainant did not seek leave to amend or supplement his original Motion for Summary Decision, noted the ALJ accepted the new filings, and advised Complainant that he was not permitted to submit any further filings in support of the Motion for Summary Decision.⁹

On January 23, 2025, the ALJ issued a Ruling on Complainant's Motion for Summary Decision (Summary Decision Ruling) denying Complainant's Second

² Ruling on Complainant's Motion for Summary Decision (Summary Decision Ruling) at 1.

³ *Id.*

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Procedural Order at 1-2.

Revised Motion for Summary Decision because Complainant failed to establish that there were no genuine issues of disputed fact.¹⁰

On January 29, 2025, the ALJ held a scheduling conference to set a formal hearing date. At the conference, Complainant orally advised that he would be filing a motion to reconsider the Summary Decision Ruling.¹¹ The ALJ orally granted Complainant's reconsideration motion but only as to Respondent's asserted reasons for terminating Complainant's employment and directed Respondent to file any affidavits it might consider appropriate.¹² On January 30, 2025, the ALJ received Complainant's Motion for Reconsideration of January 23, 2025-Order to Deny Motion for Summary Decision.¹³ Respondent filed Vince Schott's affidavit on February 6, 2025,¹⁴ and on February 10, 2025, Complainant filed a motion for leave to respond to the affidavit and to submit more documents in support of his Motion for Summary Decision.¹⁵

On February 13, 2025, the ALJ issued an Order Granting Reconsideration Motion memorializing his directives from the January 29, 2025 scheduling conference, noting that Vince Shott's affidavit was timely filed, and ordering the parties to not submit any other filings in support, opposition, or reconsideration of

¹⁰ Summary Decision Ruling at 6.

¹¹ Order Granting (Nunc Pro Tunc) Complainant's Motion to Reconsider Denial of Summary Decision (Order Granting Reconsideration Motion) at 1.

¹² *Id.* at 1-2.

¹³ *Id.* at 2. The parties' references to the filing date of this motion are inconsistent throughout the record, which appears to have caused confusion as to whether the ALJ considered it before issuing the Order Granting Reconsideration Motion. Complainant maintains in his submissions before the Administrative Review Board (ARB or Board) that he filed this motion on January 28, 2025. The Certificate of Delivery attached to the motion also lists January 28, 2025, as the date in which he emailed Respondent's counsel. However, the Certificate of Delivery does not list OALJ as a recipient to this motion. Comparatively, in the record provided by OALJ to the ARB, the CTS Case Events Listing page reflects that this motion was filed with OALJ on January 30, 2025. No other filings were submitted to OALJ by Complainant on January 28 or January 30, 2025. In the Order Granting Reconsideration Motion, the ALJ references and considers a motion for reconsideration filed by Complainant on January 30, 2025. *See id.*

¹⁴ *Id.*

¹⁵ Order Denying Motion for Leave to File Additional Summary Decision Materials and Argument (Order Denying Motion for Leave) at 1-2.

Complainant's Motion for Summary Decision.¹⁶ On the same day, the ALJ issued an order denying Complainant's February 10, 2025 motion for leave to submit additional documents in support of his Motion for Summary Decision (Order Denying Motion for Leave).

Approximately one hour after the ALJ issued the Order Denying Motion for Leave, Complainant attempted to file a Sworn Affidavit of Lorenzo Lewis in Support of Submitted Objections & Reply, Pursuant to 29 C.F.R. § 18.72(c).¹⁷ OALJ notified Complainant via email that it did not accept the filing because it was submitted after the Order Denying Motion for Leave.¹⁸ In response, on February 17, 2025, Complainant filed a second motion for reconsideration asking the ALJ to reconsider the Order Denying Motion for Leave.¹⁹ The ALJ issued an Order Denying Complainant's Second Motion for Reconsideration on February 18, 2025.²⁰

Complainant moved for the ALJ to certify an interlocutory appeal of the ALJ's Order Denying Motion for Leave and Order Denying Complainant's Second Motion for Reconsideration on February 25, 2025. The ALJ issued an Order Denying Certification of Interlocutory Appeal on February 27, 2025.²¹ Complainant then filed a Request for Disqualification and Substitution of Administrative Law Judge John M. Herke Due to His Personal Bias Pursuant to 5 U.S.C. § 556(b)(3), 29 C.F.R. §§ 18.15(a) and 18.16(b) (Request for Disqualification) on March 20, 2025. The ALJ issued a Procedural Notice on March 21, 2025, notifying Complainant that he could not rule on the request while the petitions for interlocutory review were pending before the Board as OALJ no longer had jurisdiction in the matter.²²

¹⁶ Order Granting Reconsideration Motion at 2.

¹⁷ Order Denying Complainant's Second Motion for Reconsideration at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ In the Order Denying Complainant's Second Motion for Reconsideration, the ALJ cautioned Complainant that any further filing related to the motion for summary decision could subject him to sanctions. *Id.*

²¹ In the Order Denying Certification of Interlocutory Appeal, the ALJ observed that Complainant referred to Vince Schott's affidavit as an "unsworn declaration" because it was not notarized. However, the ALJ determined that the affidavit conformed to the requirements of 28 U.S.C. § 1746 and therefore, had the same effect as a notarized affidavit. Order Denying Certification of Interlocutory Appeal at 2 n.3.

²² Procedural Notice at 2.

FILINGS BEFORE THE ADMINISTRATIVE REVIEW BOARD

On February 24, 2025, Complainant filed a Petition for Review of Administrative Law Judge’s Interlocutory Orders Denying Requested Leave to Submit Objections & Reply During Summary Decision Proceedings Pursuant to 29 C.F.R. § 18.72(c) & (h) (Petition for Interlocutory Review I).²³ Then, on March 3, 2025, Complainant filed Complainant’s Petition for Review of Administrative Law Judge’s Denial of the Request for Issuance of Certificate of Appeal Regarding Interlocutory Orders Issued February 13 and 18, 2025, Pursuant to Fed. R. App. Proc., Rule 5 & 28 U.S.C. 1292(b) (Petition for Interlocutory Review II).

While these petitions were under consideration by the Board, Complainant submitted several other filings, including an appendix for Petition for Interlocutory Review I on March 22, 2025, the ALJ’s Order Denying Complainant’s Second Motion for Reconsideration on March 24, 2025, a Motion for ARB to Issue a Ruling on the Merits of the Complainant’s Motion for Summary Decision Relief and/or Disqualification of Presiding Administrative Law Judge Pursuant to 5 U.S.C. §§ 556(b)(3), 557(b)(2), & 29 C.F.R. § 1978.110(d) (Motion for ARB to Issue a Ruling on the Merits) on March 30, 2025, and a revised version of Petition for Interlocutory Review II (Revised Petition for Interlocutory Review II) along with a corresponding appendix on April 13, 2025.

The Board consolidates the petitions for interlocutory review and dismisses Complainant’s petitions for the following reasons.

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.”²⁴ The Secretary of Labor and the Board have repeatedly held that “interlocutory appeals are generally disfavored and that there is a strong policy

²³ Complainant filed his Petition for Interlocutory Review I before seeking certification of the interlocutory appeal by the ALJ.

²⁴ Secretary’s Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary’s discretionary review of ARB decisions)), 85 Fed. Reg. 13,186, § 5(b)(69) (Mar. 6, 2020).

against piecemeal appeals.”²⁵ 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 providing for review under the collateral order doctrine.²⁶

DISCUSSION

1. The Collateral Order Doctrine

If a party has failed to obtain ALJ certification under 28 U.S.C. § 1292(b), 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.”²⁷ 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

²⁵ *Wyderka v. Energy Transfer*, ARB No. 2025-0033, ALJ No. 2023-PSI-00001, slip op. at 4 n.14 (ARB Feb. 14, 2025) (quoting *Gunther v. Deltek, Inc.*, ARB Nos. 2012-0097, -0099, ALJ No. 2010-SOX-00049, slip op. at 2 (ARB Sept. 11, 2012)). While the Board generally disfavors interlocutory appeals, the Board has accepted review under limited circumstances. *See, e.g., Fagan v. Dep’t of Navy*, ARB No. 2023-0006, ALJ No. 2021-CER-00001 (ARB Apr. 6, 2023) (Order Granting Interlocutory Review) (reviewing whether ALJs have subpoena authority in whistleblower and other proceedings with trial-type hearings without express statutory authorization); *Willbanks v. Atlas Air Worldwide Holdings, Inc.*, ARB No. 2014-0050, ALJ No. 2014-AIR-00010 (ARB July 17, 2014) (Order Granting Petition for Interlocutory Review and Establishing Briefing Schedule) (reviewing whether transportation workers were exempt from arbitration requirements of the Federal Arbitration Act); *Mull v. Salisbury Veterans Admin. Med. Ctr.*, ARB No. 2009-0107, ALJ No. 2008-ERA-00008 (ARB Oct. 7, 2009) (Order Granting Motion for Interlocutory Review and Inviting the Associate Solicitor for Occupational Safety and Health to File an Amicus Brief) (reviewing whether Congress waived the federal government’s sovereign immunity under the Energy Reorganization Act).

²⁶ *Gulden v. Exxon Mobil Corp.*, ARB No. 2023-0050, ALJ Nos. 2023-SOX-00021, -00022, slip op. at 4 (ARB Feb. 29, 2024) (citing *Powers v. Pinnacle Airlines, Inc.*, ARB No. 2005-0138, ALJ No. 2005-SOX-00065, slip op. at 5-6 (ARB Oct. 31, 2005)).

²⁷ *Id.* at 5 (quoting *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949)).

judgment.²⁸ Even if the order meets the exception’s requirements, the Board’s decision to accept the petition remains discretionary.²⁹

2. Petition for Interlocutory Review I

In Petition for Interlocutory Review I, Complainant asks the Board to review the ALJ’s Order Denying Motion for Leave and Order Denying Complainant’s Second Motion for Reconsideration. Complainant argues that review is warranted under the collateral order exception because: (1) the ALJ’s orders have “operated to work an injury ancillary to and independent from the merits of” Complainant’s motion for summary decision; (2) Complainant’s procedural rights cannot be effectively vindicated on appeal; and (3) Complainant possesses a vital interest in exercising these procedural rights to have evidence excluded before the ALJ considers it in arriving at a decision on the merits of the motion for summary decision.³⁰

We disagree. Complainant has not demonstrated that the ALJ’s orders would be “effectively unreviewable” upon appeal of a final judgment. “To be effectively unreviewable, the right sought to be protected by the interlocutory appeal must be, for all practical and legal purposes, destroyed if it were not vindicated prior to final judgment.”³¹ Instead, Complainant’s Petition for Interlocutory Review I questions various discretionary and procedural rulings by the ALJ, which are inappropriate for interlocutory review and readily subject to review upon appeal of an ALJ’s final order.³² Accordingly, Complainant’s Petition for Interlocutory Review I is **DENIED**.

²⁸ *Mitchell v. Manning Trucking, Inc.*, ARB No. 2025-0010, ALJ No. 2024-STA-00020, slip op. at 4 (ARB Dec. 17, 2024) (citing *Kossen v. Asia Pac. Airlines*, ARB No. 2023-0041, ALJ No. 2023-AIR-00001, slip op. at 3 (ARB Aug. 22, 2023)).

²⁹ Secretary’s Order No. 01-2020, § 5(b)(69).

³⁰ Petition for Interlocutory Review I at 20-21.

³¹ *Priddle v. United Airlines, Inc.*, ARB No. 2021-0064, ALJ No. 2020-AIR-00013, slip op. at 8 (ARB Jan. 26, 2022) (internal quotation and citation omitted). The Board has also noted that “[a]s 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.” *Priddle v. United Airlines, Inc.*, ARB No. 2022-0006, ALJ No. 2020-AIR-00013, slip op. 5-6 (ARB Mar. 21, 2022) (quoting *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 107 (2009)).

³² *See Sharma v. Amazon Web Servs., Inc.*, ARB No. 2023-0017, ALJ No. 2020-LCA-00006, slip op. at 2-3 (ARB Jan. 26, 2023) (dismissing interlocutory review of ALJ’s evidentiary rulings); *Barr v. CTL Transp., LLC*, ARB No. 2018-0034, ALJ No. 2014-STA-

3. Revised Petition for Interlocutory Review II

In Revised Petition for Interlocutory Review II, Complainant asks the Board to review the ALJ's Order Denying Certification of Interlocutory Appeal.³³ Complainant contends that the ALJ erred in denying certification of the interlocutory appeal because review of the ALJ's Order Denying Motion for Leave and Order Denying Complainant's Second Motion for Reconsideration is warranted under 28 U.S.C. § 1292(b) as the issues presented involve controlling questions of law, the ALJ's orders are conclusive as to which there are substantial grounds for differences of opinion, and interlocutory review would materially advance the ultimate termination of litigation.³⁴

Again, we disagree. As previously discussed, if a party has failed to obtain ALJ certification, the Board may still consider reviewing an interlocutory order that meets the collateral order exception. Complainant's Revised Petition for Interlocutory Review II does not address how the ALJ's Order Denying Certification of Interlocutory Appeal meets the collateral order exception, and even if it did, Complainant has not previously demonstrated that the ALJ's orders requested to be reviewed are "effectively unreviewable" upon appeal of a final judgment. Accordingly, Complainant's Revised Petition for Interlocutory Review II is **DENIED**.

4. Motion for ARB to Issue a Ruling on the Merits

As a preliminary matter, the Board considers and interprets this filing as a separate petition for interlocutory review because the Board does not have jurisdiction to consider or rule on the requested relief as it has not accepted the other petitions for interlocutory review prior to or after this filing.³⁵ Upon review of

00022, slip op. at 2 (ARB Apr. 1, 2019) (dismissing interlocutory review of ALJ's discretionary and procedural rulings).

³³ Revised Petition for Interlocutory Review II at 17.

³⁴ *Id.* at 19.

³⁵ See Secretary's Order No. 01-2020, § 5(b). Petition for Interlocutory Review I was assigned ARB Case Number 2025-0037. Petition for Interlocutory Review II was assigned ARB Case Number 2025-0039. The ARB hereby assigns Complainant's Motion for ARB to Issue a Ruling on the Merits ARB Case Number 2025-0051, and consolidates it with ARB Case Numbers 2025-0037 and -0039.

the Motion for ARB to Issue a Ruling on the Merits, in the context of a petition for interlocutory review, the Board declines to accept the case for review.

First, as to Complainant's request to disqualify the presiding ALJ pursuant to 5 U.S.C. § 556(b)(3) and 29 C.F.R. § 1978.110(d), Complainant avers that the record evidence demonstrates that the ALJ's orders prejudiced Complainant's procedural rights, which evinces the ALJ's personal bias.³⁶ Before the ALJ, Complainant made a similar motion, and the ALJ issued a Procedural Notice deferring to rule on the motion as Complainant's other petitions for interlocutory appeal were pending before the Board.³⁷ The Motion for ARB to Issue a Ruling on the Merits does not address how the Procedural Notice falls within the collateral order exception. Even if it addressed the exception, or alternatively, had the ALJ denied the request to recuse, the Board has previously denied a petition for interlocutory appeal requesting review of an order denying a motion to recuse because the issue raised may be effectively reviewed on appeal from a final judgment.³⁸

Second, as to Complainant's alternative request to issue a ruling on the merits of Complainant's Motion for Summary Decision, Complainant contends that the Board has the plenary power to exercise its oversight authority to issue a ruling on his "pending" motion for reconsideration of the ALJ's Summary Decision Ruling.³⁹ In support, Complainant cites to the Administrative Procedure Act and *Walia v. The Veritas Healthcare Sols. LLC*.⁴⁰ This argument is unpersuasive. As previously discussed in footnote 13, the record reflects that Complainant's alleged "pending motion for reconsideration" was received by OALJ on January 30, 2025, and the ALJ considered the motion in the Order Granting Reconsideration Motion on February 13, 2025. Because there is no pending motion for reconsideration before the ALJ, the Board examines this motion as a petition for interlocutory appeal of the Order Granting Reconsideration Motion.

³⁶ Motion for ARB to Issue a Ruling on the Merits at 5-6, 8, 13-15, 20-22.

³⁷ Procedural Notice at 2.

³⁸ *Mitchell*, ARB No. 2025-0010, slip op. at 4-5 (citing *Thompson v. Comm'r of Internal Revenue*, 742 F. App'x 316, 317 (9th Cir. 2018)).

³⁹ Motion for ARB to Issue a Ruling on the Merits at 22-24.

⁴⁰ *Walia v. The Veritas Healthcare Sols. LLC*, ARB No. 2014-0002, ALJ No. 2013-LCA-00005, slip op. at 4 (ARB Feb. 27, 2015).

Complainant's petition for interlocutory appeal of the Order Granting Reconsideration Motion does not meet the collateral order exception's second prong, to resolve an important issue completely separate from the merits of the action. Complainant's petition essentially requests the Board to issue an order granting a motion for reconsideration of the ALJ's Summary Decision Ruling, which would resolve the merits of the action.⁴¹

Moreover, even if Complainant's motion for reconsideration was still pending, the Board does not have the authority to rule on a pending motion before OALJ. While Complainant correctly identified the standard of review the Board employed in *Walia*, the present case is distinguishable from *Walia*. In *Walia*, the Board employed its power to review an ALJ's Order dismissing a case,⁴² a final order by an ALJ, as compared to the present case in which Complainant seeks the Board to issue a ruling on behalf of an ALJ. The Board's authority is limited to reviewing decisions and interlocutory rulings.⁴³ In such a scenario as described in this paragraph, there is no interlocutory ruling to review because the motion would be still pending before the ALJ. Accordingly, the Motion for ARB to Issue a Ruling on the Merits for is **DENIED**.

5. Standards of Conduct by the Parties

The Board also takes this opportunity to address the parties' conduct during the proceedings below. The Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (OALJ Rules of Practice and Procedure) are designed to "secure the just, speedy, and inexpensive determination of every proceeding."⁴⁴ These OALJ Rules of Practice and Procedure include provisions to ensure that parties "act in a manner that furthers the efficient, fair and orderly conduct of the proceeding."⁴⁵ Upon review of the record, both parties appear to have engaged in dilatory and contemptuous behavior that

⁴¹ "The case record is clear and unambiguous to allow the ARB to issue a decision on the merits in this matter[.]" Motion for ARB to Issue a Ruling on the Merits at 23.

⁴² *Walia*, ARB No. 2014-0002, slip op. at 2.

⁴³ *See* Secretary's Order No. 01-2020, § 5(b).

⁴⁴ 29 C.F.R. § 18.10(a).

⁴⁵ *Id.* § 18.22(c); *see also id.* §§ 18.22(d), 18.87(a)-(b).

has interfered with the judicial process.⁴⁶ The parties are directed to comply with the OALJ Rules of Practice and Procedure upon the resumption of the proceedings below. The parties have been warned that they are expected to follow the rules and act in a manner that furthers the efficient, fair and orderly conduct of the proceeding.⁴⁷ Failure to comply with the OALJ Rules of Practice and Procedure may result in sanctions, at the discretion of the ALJ.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

ELLIOT M. KAPLAN
Administrative Appeals Judge

⁴⁶ For example, Complainant defied the ALJ's orders directing the parties to not submit any other filings in support, opposition, or reconsideration of Complainant's Motion for Summary Decision. Conversely, it appears that Respondent engaged in questionable discovery practices, including but not limited to, allegedly failing to disclose a material witness. We recognize that Complainant is *pro se* and is "afforded certain latitudes;" however, he is not excused from the rules of practice and procedure applicable to the proceedings merely because of his *pro se* status. *Jeanty v. Lily Transp. Corp.*, ARB No. 2019-0005, ALJ No. 2018-STA-00013, slip op. at 12 (ARB May 13, 2020).

⁴⁷ It is not uncommon for courts to admonish parties for their behavior. *Klayman v. City Pages*, 650 F. App'x. 744, 749 (11th Cir. May 27, 2016) (citation omitted); see *J.D. v. Nagin*, Civ. No. 07-9755, 2009 WL 363456, at *5 (E.D. La. Feb. 11, 2009) (admonishing party for its "seeming attempts to circumvent" judge's rulings).