

U.S. Department of Labor

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



IN THE MATTER OF:

SERGIO B. ROBLES,

ARB CASE NO. 2025-0058

COMPLAINANT,

ALJ CASE NO. 2025-STA-00050,

-00051, -00052

v.

ALJ DREW A. SWANK

**MR. BULTS, INC., TEAMSTERS 731,
and WASTE MANAGEMENT,**

DATE: February 20, 2026

RESPONDENTS.

Appearances:

For the Complainant:

Sergio B. Robles; *Pro Se*; Rockford, Illinois

For the Respondent Mr. Bults, Inc.:

Tom H. Luetkemeyer, Esq.; *Hinshaw & Culbertson LLP*; Chicago, Illinois

For the Respondent Teamsters 731:

Rachel R. Rekowski, Esq.; *Herzfeld, Suetholz, Gastel, Leniski & Wall, PLLC*; Cincinnati, Ohio

For the Respondent Waste Management:

John W. Stapleton, Esq.; *Fisher & Phillips LLP*; Atlanta, Georgia

Before KAPLAN and KIKO, Administrative Appeals Judges

DECISION AND ORDER

This case arises under the Surface Transportation Assistance Act of 1982 (STAA), as amended, and its implementing regulations.¹ Complainant Sergio B.

¹ 49 U.S.C. § 31105(a); 29 C.F.R. Part 1978 (2025).

Robles filed whistleblower complaints with the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Respondents Mr. Bult's, Inc., Teamsters 731, and Waste Management unlawfully retaliated against him for engaging in STAA protected activity.² OSHA dismissed the complaints as untimely. Complainant objected to OSHA's determination and the case was assigned to an Administrative Law Judge (ALJ). On May 7, 2025, the ALJ dismissed the complaints as untimely.³ Complainant petitioned the Administrative Review Board (Board) for review of the ALJ's Order. For the following reasons, we affirm.

BACKGROUND

On October 6, 2023, Respondent Mr. Bults, Inc. began the process of terminating Complainant's employment.⁴ On October 9, 2023, Mr. Bults, Inc. formally notified Complainant that his employment was terminated.⁵

On January 18, 2025, Complainant filed a complaint with OSHA, alleging that Respondents Teamsters 731 and Mr. Bults, Inc. colluded and retaliated against him by terminating him in reprisal for raising safety and health concerns in violation of the STAA.⁶ On January 21, 2025, Complainant filed another complaint with OSHA alleging the same against Respondent Waste Management.⁷ OSHA dismissed Complainant's complaints.

Complainant filed an objection and requested a hearing before an ALJ with the Office of Administrative Law Judges (OALJ). On April 21, 2025, Respondent Teamsters 731 filed a Motion to Dismiss for Untimely Complaint.⁸ On April 22, 2025, the ALJ issued an Order to Show Cause, ordering Complainant to show why the motion should not be granted.⁹

Complainant contended that equitable tolling was necessary to prevent injustice, and that extraordinary circumstances were warranted because of Respondents' alleged withholding of evidence, concealment of an updated collective

² Order Dismissing Claim Pursuant to 49 U.S.C. § 31105(b)(1) (ALJ May 7, 2025) (Order) at 1.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 2.

⁹ *Id.*

bargaining agreement, and ongoing interference with his complaint.¹⁰ The ALJ concluded that Complainant's arguments were meritless and unpersuasive because Complainant's allegations were unsubstantiated.¹¹ The ALJ found that Complainant had actual knowledge of the alleged adverse action on October 6, 2023, or at the latest on October 9, 2023, when Mr. Bults, Inc. terminated his employment, and that Complainant did not explain why he did not file his complaint within the 180-day time period.¹² The ALJ determined that equitable tolling did not apply, and dismissed the whistleblower complaints as untimely.¹³

Complainant filed a petition for review before the Board. Both parties filed briefs.¹⁴

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated the Board the authority to hear appeals from ALJ decisions and issue agency decisions under the STAA.¹⁵ The Board reviews an ALJ's grant of summary decision de novo under the same standard the ALJ applies.¹⁶ This includes pre-hearing dismissals based on timeliness.¹⁷

DISCUSSION

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 2-3.

¹⁴ Complainant also filed two motions. On September 9, 2025, Complainant filed a Notice of Respondent Mr. Bult's, Inc. Non-Compliance with Briefing Order, contending that Respondent Mr. Bults, Inc. should be sanctioned for not filing a response brief. Complainant cites several cases to support his argument. We deny Complainant's motion. Respondent Mr. Bults, Inc. was not required to submit a response brief and the cases Complainant cited to do not support his argument. Next, on September 14, 2025, Complainant filed a Notice of Respondents' Procedural Violations Affecting Proceedings, reiterating his argument above as well as arguments made in his Opening Brief. We are not persuaded by his arguments and to the extent they can be considered a motion, deny it as well.

¹⁵ 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. 13186 (Mar. 6, 2020).

¹⁶ *Kirschmann v. Hampton Rds. Transit*, ARB No. 2023-0002, ALJ No 2021-NTS-00006, slip op. at 6 (ARB Feb. 14, 2024) (citation omitted).

¹⁷ *Rashad v. Ryder Integrated Logistics, Inc.*, ARB No. 2025-0047, ALJ No. 2025-STA-00039, slip op. at 4 (ARB Aug. 14, 2025) (citation omitted).

Summary decision is appropriate where “there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law.”¹⁸ In considering a motion for summary decision, the Board views the evidence, and makes all reasonable inferences, in the light most favorable to the non-moving party.¹⁹ If the moving party demonstrates an absence of evidence supporting the non-moving party’s position, the burden shifts to the non-moving party to establish the existence of an issue of fact that could affect the outcome of the litigation.²⁰ The non-moving party may not rest upon mere allegations, speculation, or denials, but must instead set forth specific facts on each issue upon which the non-moving party would bear the ultimate burden of proof.²¹ If the non-moving party fails to show an essential element of their case, there can be no “genuine issue of material fact,” since a complete failure of proof concerning an essential element necessarily renders all other facts immaterial.²²

A complainant pursuing a whistleblower retaliation claim under the STAA must meet certain deadlines.²³ These deadlines apply whether a complainant is represented by counsel or is proceeding pro se.²⁴ Complainants are responsible for determining which statute, and which deadline, applies to their case and for meeting that deadline.²⁵ “[I]gnorance of the law is no excuse” for missing a filing deadline.²⁶ Employees alleging employer retaliation in violation of the STAA must file their complaints with OSHA within 180 days of the alleged retaliatory act.²⁷

¹⁸ 29 C.F.R. § 18.72(a).

¹⁹ *Judy v. Covenant Transp.*, ARB No. 2021-0015, ALJ No. 2019-STA-00054, slip op. at 4 (ARB Nov. 8, 2021) (citation omitted).

²⁰ *See Kirschmann*, ARB No. 2023-0002, slip op. at 6 (citations omitted).

²¹ *Id.* (citation omitted).

²² *White v. Carl Perry Enter., Inc.*, ARB No. 2014-0024, ALJ No. 2013-STA-00013, slip op. at 4 (ARB Dec. 10, 2015) (“failure to demonstrate that there is a genuine issue of material fact on any one of these essential elements means that a complainant cannot prevail on his retaliation claim”).

²³ 49 U.S.C. § 31105(b)(1).

²⁴ *Jeanty v. Lily Transp. Corp.*, ARB No. 2019-0005, ALJ No. 2018-STA-00013, slip op. at 12 (ARB May 13, 2020) (citation omitted) (A complainant “is not excused from the rules of practice and procedure applicable to this proceeding merely because of his [or her] pro se status.”).

²⁵ *Mehrotra v. Gen. Elec. Co.*, ARB No. 2022-0060, ALJ No. 2017-SOX-00014, slip op. at 4 (ARB Sept. 21, 2023).

²⁶ *Id.* (citing *Martin v. Paragon Foods*, ARB No. 2022-0058, ALJ No. 2021-FDA-00001, slip op. at 6 (ARB June 8, 2023) (citation omitted)).

²⁷ 49 U.S.C. § 31105(b)(1).

The Board has found that the statutes of limitation in whistleblower cases begin to run on the date an employee receives “final, definitive, and unequivocal notice” of an adverse employment decision.²⁸ The claim accrues on “[t]he date that an employer communicates a decision to implement such a decision, rather than the date the consequences of the decision are felt.”²⁹ The Board may modify a filing deadline under equitable tolling principles, which focus on a complainant’s “excusable ignorance of the employer’s discriminatory act.”³⁰

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.’”³¹ The Board has recognized several principal situations in which the limitations period may be tolled, including: (1) when the movant has raised the precise statutory claim in issue but has done so in the wrong forum; (2) when the movant has in some extraordinary way been prevented from filing; and (3) when the movant has some excusable ignorance of the respondent’s discriminatory act.³² Complainant bears the burden of justifying the application of equitable tolling.³³ To invoke equitable tolling, the claim must be brought within a reasonable time after the complainant “has obtained, or by due diligence could have obtained, the necessary information” giving rise to the claim.³⁴

Here, Respondent Mr. Bults, Inc. terminated Complainant’s employment on October 9, 2023.³⁵ Complainant did not file his OSHA whistleblower complaints against Respondents Mr. Bults, Inc. and Teamsters 731 until January 18, 2025, and against Respondent Waste Management until January 21, 2025, approximately nine months after the 180-day deadline.³⁶ Thus, Complainant’s complaints are untimely.

²⁸ *Mehrotra*, ARB No. 2022-0060, slip op. at 5 (citation omitted).

²⁹ *Id.* (citations omitted).

³⁰ *Martin*, ARB No. 2022-0058, slip op. at 8 (citations omitted).

³¹ *Id.* at 9 (citation omitted).

³² *Id.* (citations omitted).

³³ *Id.* (citations omitted).

³⁴ *Judy*, ARB No. 2021-0015, slip op. at 4 (quoting *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 453 (7th Cir. 1990)).

³⁵ Order at 1.

³⁶ *Id.*

Complainant contends that the ALJ erred in finding that equitable tolling did not apply.³⁷ Specifically, Complainant alleges that Respondents have a systemic pattern of obstructing investigations.³⁸ We are not persuaded. Complainant has not provided evidence to support these allegations and even if he had, he has not explained how these circumstances prevented him from filing a timely whistleblower claim. As the ALJ found, these accusations are meritless and without sufficient proof of either manifest injustice or that equitable tolling applies. Thus, Complainant's OSHA complaints are untimely and equitable tolling does not apply.

Next, Complainant contends that the continuing violations doctrine applies.³⁹ Specifically, Complainant alleges that continuing violations are demonstrated by unpaid wages for training purposes, Respondents withholding evidence, Respondents' alleged use of fraudulent documents in Complainant's unemployment case, Respondents' interference with his complaints, and Respondent Teamsters 731's denial of his grievance and arbitration rights.⁴⁰

The continuing violations doctrine may allow a complainant "who ordinarily would be unable to recover damages for discrete acts of discrimination falling outside the limitations period [to] avoid that bar if those acts are shown to be part of a pattern of discrimination anchored by acts that occurred within the limitations period."⁴¹ The continuing violation doctrine is not a grounds for tolling, but instead "forestalls the commencement of the limitations period for as long as the continuing violation is ongoing."⁴² The continuing violations doctrine does not apply to discrete acts of alleged discrimination.⁴³ Discrete acts include "termination, failure to promote, denial of transfer, or refusal to hire."⁴⁴ The continuing violation doctrine is generally applied in the context of hostile work environment claims.⁴⁵

We conclude that the continuing violations doctrine does not apply because the alleged adverse actions taken in this matter were all discrete acts. As the ALJ

³⁷ Complainant's (Comp.) Brief (Br.) at 8, 22-23.

³⁸ *Id.* at 15-16.

³⁹ *Id.* at 5-6.

⁴⁰ *Id.* at 6, 12-14.

⁴¹ *Trivedi v. Gen. Elec.*, ARB No. 2022-0026, ALJ No. 2022-SOX-00005, slip op. at 9 (ARB Aug. 24, 2022) (citation omitted).

⁴² *Woods v. Boeing-South Carolina*, ARB No. 2013-0035, ALJ No. 2011-AIR-00009, slip op. at 2 n.3 (ARB Mar. 20, 2014) (citation omitted).

⁴³ *Id.* (citation omitted).

⁴⁴ *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002).

⁴⁵ *See id.* at 115-21.

found, Complainant's allegations that the alleged adverse actions constituted a continuing violation lack merit and are unsubstantiated. Complainant has simply not demonstrated that any of these allegations are part of a pattern of discrimination that is anchored by acts that occurred within the limitations period. Thus, the continuing violations doctrine does not apply.

Lastly, Complainant also asserts that, because the ALJ initially accepted jurisdiction of his complaint and established a hearing schedule, the ALJ's dismissal demonstrates a "fundamental misunderstanding or oversight" of the principles of equitable tolling, continuing violations, and the STAA.⁴⁶ We disagree. OALJ initially accepting jurisdiction does not mean that a case cannot be dismissed on the basis of timeliness. Moreover, Complainant has not adequately explained how OALJ initially accepting his claim demonstrates that the principles of equitable tolling apply, how it supports a continuing violation, or how it is contrary to the STAA.

CONCLUSION⁴⁷

Accordingly, we **AFFIRM** the ALJ's Order dismissing the complaints.

SO ORDERED.

ELLIOT M. KAPLAN
Administrative Appeals Judge

PHILIP G. KIKO
Administrative Appeals Judge

⁴⁶ Comp. Br. at 6.

⁴⁷ In any appeal of this Decision and Order that may be filed, we note that the appropriately named party is the Secretary, Department of Labor (not the Administrative Review Board).