U.S. Department of Labor

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

IN THE MATTER OF:

FERNANDO D. WHITE,

COMPLAINANT,

v.

MARTEN TRANSPORT LTD.,

RESPONDENT.

ARB CASE NO. 2026-0061

ALJ CASE NO. 2025-STA-00109
ALJ THEODORE W. ANNOS

DATE: September 11, 2026

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 the Surface Transportation Assistance Act (STAA).[1] Complainant Fernando White is employed by Respondent Marten Transport as a truck driver. On July 19, 2024, Complainant filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA), alleging that Respondent placed him on leave in violation of the employee protection provisions of STAA.[2] On June 23, 2025, OSHA dismissed the complaint, and Complainant sought review of OSHA's dismissal with the Office of Administration Law Judges. The case is currently pending before Administrative Law Judge (ALJ) Theodore W. Annos. The litigation is currently in the discovery phase, which the ALJ extended until September 1, 2026, for the sole purpose of taking Complainant's deposition.

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[1] 49 U.S.C. § 31105; 29 C.F.R. Part 1978 (2026).

[2] Complainant alleges that Respondent placed him on unpaid leave when he refused to operate a commercial motor vehicle in violation of applicable motor safety and hours of service regulations and refused to falsify entries from his vehicle's electronic logging device. *See* 49 U.S.C. § 31105(a)(1)(B)(i) (prohibiting an employer from discriminating against an employee because the employee refuses to operate a vehicle in violation of a regulation, standard, or order related to commercial motor vehicle safety, health, or security).

Complainant also brought a case against Respondent in federal district court alleging a violation of the Americans with Disabilities Act (ADA).[3] By Complainant's own admission, the two cases "involv[e] the same underlying facts and substantially overlapping witnesses."[4] The parties have agreed that Complainant will only be deposed once between both actions.[5]

Complainant has averred that he suffers from dyslexia, lumbar radiculopathy, and adjustment disorder with mixed anxiety and depressed mood.[6] On May 18, 2026, Complainant filed a motion in his federal court action requesting that the court order Respondent "and its counsel to implement reasonable disability accommodations in connection with all future depositions and discover proceedings" in the case.[7] The following day, Complainant filed a motion seeking substantially the same relief with the ALJ.[8] In these filings, Complainant sought permission to use the following assistive technologies during "all remaining discovery in this proceeding . . . including all depositions, meet and confer sessions, and other discovery-related proceedings": (i) a speech-to-text transcription service; (ii) digital voice recorder; . . . (vi) Bluetooth ear bud; (vii) smartphone and mobile hotspot.[9] Complainant also sought the following accommodations: (i) ten-minute breaks every hour; (ii) extended response time; (iii) plain-language questions; (iv) pre-deposition access to all exhibits in accessible digital format at least five business days prior to each deposition; and (v) uninterrupted speaking time during all meet and confer sessions.[10]

On May 20, 2026, the district court issued an order noting that a discovery conference was held and the parties agreed that Complainant "may use all assistive

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3 42 U.S.C. § 12101 et seq.

4 Petition for Review at 2.

5 *Id*. at 10.

6 *Id*. at 2, 4.

7 Plaintiff's Motion for Reasonable Accommodations, *White v. Marten Transp. Ltd.*, Civil Action No. 1:25-cv-04435-ELR-AWH (N.D. Ga. May 18, 2026), ECF No. 28.

8 For clarity, we refer to Complainant's filing in his civil action as the District Court Request for Accommodations and his filing in the instant case as the Motion for Accommodations.

9 Motion for Accommodations at 12.

10 *Id*.

technologies during his deposition except the smart glasses and blue tooth ear buds. Defendant agrees to provide longer exhibits (10 pages or more) to Plaintiff in advance of the deposition. All shorter exhibits will be provided during the deposition and Plaintiff will be given an opportunity to review them."[11] Accordingly, the district court denied Complainant's Request for Accommodations as moot. On August 5, 2026, the ALJ issued an order denying Complainant's Motion for Accommodations (Accommodations Order), finding that "the deposition parameters established in the [district court] Action are reasonable for purposes of Complainant's deposition in this matter" and that "Complainant has not established a sufficient basis to require counsel to afford him uninterrupted speaking time during meet and confers."[12] On August 12, 2026, Complainant filed an interlocutory appeal of the ALJ's order with the Administrative Review Board (Board).[13]

JURISDICTION AND STANDARD OF REVIEW

Because the ALJ had not yet issued a decision fully disposing of the claims in Complainant's complaint, Complainant's petition is for interlocutory review. Under the Secretary's delegation of authority to the Board, the Board may only consider and dispose of interlocutory appeals "in exceptional circumstances, provided such review is not prohibited by statute."[14] The Secretary of Labor and the Board have

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[11] *White v. Marten Transp. Ltd.*, Civil Action No. 1:25-cv-04435-ELR-AWH (N.D. Ga. May 20, 2026), ECF No. 29.

[12] Accommodations Order at 1. On August 10, Complainant filed a "renewed and supplemental motion" requesting the same accommodations he requested in his Motion for Accommodations, as well as an extension of the discovery completion deadline from September 1, 2026 to November 14, 2026, "for the purpose of permitting Complainant to complete the depositions of . . . ten (10) witnesses." On August 27, 2026, the ALJ issued an order requiring that Complainant's deposition be subject to the same accommodations provided during his deposition in the ADA proceeding and denying the renewed motion in all other respects.

[13] In his Petition for Review, Complainant argues that this appeal presents a question of first impression: whether an ALJ may deny a litigant's motion for reasonable accommodations "without once citing, analyzing, or applying Section 504 of the Rehabilitation Act of 1973." We note that the Rehabilitation Act, unlike the ADA, covers federal government programs.

[14] 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).

held many times that interlocutory appeals are generally disfavored and that there is a strong policy against piecemeal appeals in stages before the final order.[15]

DISCUSSION

1. The Issue Was Not Certified Pursuant to 28 U.S.C. § 1292(b)

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 to certify issues involving a controlling question of law for immediate appeal in accordance with 28 U.S.C. § 1292(b).[16] Here, Complainant did not request or receive ALJ certification.[17]

2. The Accommodations Order Does Not Satisfy the Collateral Order Exception

Where a party has not obtained ALJ certification, the Board may still consider reviewing an interlocutory order provided that it meets the collateral order exception. Under Supreme Court precedent, the collateral order exception applies if the decision being appealed "appears to fall in that small class 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

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[15] *See, e.g., Gunther v. Deltek, Inc.*, ARB Nos. 2012-0097, -0099, ALJ No. 2010-SOX-00049, slip op. at 2 (ARB Sept. 11, 2012) (Order Dismissing Interlocutory Appeals) (citations omitted); *Gloss v. Tata Chems. N. Am.*, ARB No. 2022-0054, ALJ No. 2020-CAA-00008, slip op. at 2 (ARB Sept. 20, 2022) (Order Dismissing Interlocutory Appeal); *Marks v. Conopco, Inc.*, ARB No. 2025-0084, ALJ No. 2025-TAX-00017, slip op. at 2-3 (ARB Nov. 20, 2025) (Decision and Order Denying Interlocutory Appeal).

[16] *See Marks*, ARB No. 2025-0084, slip op. at 3 (citation omitted); *see also Kossen v. Asia Pac. Airlines*, ARB No. 2023-0041, ALJ No. 2023-AIR-00001, slip op. at 2-3 (ARB Aug. 22, 2023) (citations omitted).

[17] In his petition for review, Complainant references the relevant factors under 28 U.S.C. § 1292(b), namely, that the order a party is appealing 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, and argues that those "criteria are satisfied here." Petition for Review at 6. However, these factors govern when the ALJ should certify a question for immediate appeal, which has not occurred in the instant case.

adjudicated."[18] We, like the federal courts, have articulated the collateral order exception as a three-pronged standard requiring that the order: (1) conclusively determines the disputed question; (2) resolves an important issue completely separate from the merits of the action; and (3) is effectively unreviewable on appeal from a final judgment.[19]

Assuming, arguendo, that the first two factors are met, we find that the Accommodations Order does not fall within the collateral order exception because it is not effectively unreviewable on appeal from a final judgment. In clarifying when an order is effectively unreviewable on appeal, the Supreme Court has said that the focus is on "the entire category to which a claim belongs . . . [a]s long as the class of claims, taken as a whole, 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" jurisdiction under the collateral order doctrine (emphasis added).[20] The Court further explained that "the decisive consideration is whether delaying review until the entry of final judgment would imperil a substantial public interest or some particular value of a high order."[21]

We have previously recognized that discovery and similar evidentiary disputes, even when they involve uncommon issues such as embarrassment to a party, are not unreviewable on final appeal.[22] We have also recognized that discovery disputes generally do not implicate any substantial public interest that overcomes finality principles.[23] The federal courts, too, have taken the view that

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[18] *Cohen v. Beneficial Indus. Loan Corp*., 337 U.S. 541, 546 (1949); *see also Gloss*, ARB No. 2022-0054, slip op. at 3 (applying the same standard to ALJ orders).

[19] *See, e.g., Marks*, ARB No. 2025-0084, slip op. at 4 (citing *Kossen*, ARB No. 2023-0041, slip op. at 4); *see also Carpenter v. Mohawk Indus*., Inc., 541 F.3d 1048, 1052 (11th Cir. 2008), *aff'd*, 558 U.S. 100 (2009) (applying the same three-pronged test for application of the collateral order exception).

[20] *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 107 (2009); *Lattimore v. Alaska Airlines, Inc*., ARB No. 2025-0089, ALJ No. 2025-AIR-00038, slip op. at 5 (ARB Mar. 9, 2026); *see also Fernandez v. Navistar Int'l Corp*., ARB No. 2010-00035, ALJ No. 2009-SOX-00043, slip op. at 4-5 (ARB Mar. 4, 2010) (adopting *Mohawk*'s test for Board proceedings).

[21] *Mohawk*, 558 U.S. at 107 (cleaned up) (quoting *Will v. Hallock*, 546 U.S. 345, 352-53 (2006)).

[22] *See Petitt v. Delta Airlines, Inc*., ARB No. 2022-0047, ALJ No. 2018-AIR-00041, slip op. at 6 (ARB Sept. 26, 2022) (Decision and Order Denying Interlocutory Appeal).

[23] *Adm'r, Wage and Hour Div., USDOL v. Goldstar Amusements, Inc*., ARB No. 2022-0027, ALJ Nos. 2021-TNE-00027, -00028, slip op. at 8 n.50 (ARB Sept. 30, 2022) (Decision

discovery disputes, even when they involve important issues such as privacy rights and issues of privilege, are generally "reviewable by means other than immediate appeal."[24] Even though the dispute in the instant case goes beyond a run-of-the-mill discovery dispute and involves important issues relating to disability access in federal government programs, we find the same to be true here.

To be clear, we have no doubt that the alleged harm Complainant seeks to avoid involves a substantial public interest. Congress' enactment of Section 504 of the Rehabilitation Act was a "landmark event" that its proponents understood as "a sweeping and even a revolutionary commitment."[25] Similarly, the 1978 amendments that applied Section 504 to the federal government were intended to advance "a uniform and equitable policy for eliminating discrimination."[26] To fulfill the important government policy that federal programs are operated without discrimination on the basis of handicap or disability, the Department of Labor has promulgated regulations establishing that "no qualified individual with handicaps shall on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department" of Labor.[27] Importantly, these regulations prescribe how complaints alleging noncompliance with Section 504 are to be processed. In relevant part, the regulations require that allegations of discrimination on the basis of handicap in programs or activities conducted by the Department of Labor shall be directed to the Director of the Department's Civil

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and Order Denying Interlocutory Appeal). Here, our inquiry is not simply into whether the interest involved is important, but whether deferring review until final judgment so imperils the interest as to warrant immediate appeal. *See Mohawk*, 558 U.S at 108-09 ("We routinely require litigants to wait until after final judgment to vindicate valuable rights, including rights central to our adversarial system.").

[24] *All Plaintiffs v. Transocean Offshore Deepwater Drilling Inc.,* 505 F. App'x 355, 358 (5th Cir. 2013) (denying an interlocutory appeal of an order that a witness submit to a medical examination for purposes of determining the witness's ability to give a deposition, and that the witness provide his medical records to a court-appointed psychiatrist).

[25] 123 Cong. Rec. 12,216 (1977) (statement of Sen. Humprey).

[26] 124 Cong. Rec. 13,901 (1978) (statement of Rep. Jeffords).

[27] 29 C.F.R. § 33.6.

Rights Center.[28] The Board, by contrast, does not have jurisdiction over claims of alleged violations of the Rehabilitation Act.[29]

As noted in the district court's order denying Complainant's Request for Accommodations, the parties have agreed to many of the accommodations that Complainant initially sought, including the use of most (but not all) of the assistive technology that Complainant sought for his deposition. To avoid any doubt as to whether these accommodations would apply to his deposition in the instant case, the ALJ on August 27, 2026, ordered that "[Complainant's] deposition shall be subject to the same accommodations provided during his deposition in the ADA proceeding."[30] Most importantly, Complainant is not without recourse. The complaint procedure contained in the Department's regulations implementing Section 504 functions as a "useful safety valve for promptly correcting serious errors."[31] That his complaint can, indeed must, be processed in the manner prescribed by the Department's Section 504 regulations convince us that the Accommodations Order is not effectively unreviewable.

Further, to the extent Complainant alleges that the ALJ's Accommodations Order will prejudice him in the prosecution of his case, we note that the order is reviewable upon final appeal, where the Board may review an ALJ's procedural and evidentiary rulings under an abuse of discretion standard.[32] The Board, like other appellate tribunals, can remedy erroneous discovery-related orders by vacating an adverse judgment and remanding for a new trial.

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[28] 29 C.F.R. § 33.12. The regulations refer to the Directorate of Civil Rights, which has since been renamed as the Civil Rights Center.

[29] *See* 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); *Ashcraft v. First Citizens Bank*, ARB Nos. 2026-0008, -0017, ALJ No. 2025-SOX-00035, slip op. at 8 n.40 (ARB Jan. 30, 2026) (Decision and Order Denying Interlocutory Appeals).

[30] Order on Complainant's Renewed and Supplemental Motion at 4.

[31] *Mohawk*, 558 U.S. at 111 (cleaned up) (citing *Digital Equipment Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 883 (1994)).

[32] *See, e.g., Iwaseczko v. Teton Cnty. Weed & Pest Control Dist.*, ARB No. 2022-0059, ALJ Nos. 2018-ACA-00001, 2019-ACA-00002, slip op. at 16 (ARB Aug. 14, 2025); *May v. AGL Servs. Co.*, ARB No. 2022-0015, ALJ No. 2020-PSI-00001, slip op. at 6 (ARB Sept. 14, 2023).

CONCLUSION

For the foregoing reasons, we **DENY** Respondent's motion for interlocutory review of the ALJ's Accommodations Order.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

PHILIP G. KIKO
Administrative Appeals Judge