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
2026-0076

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

DATE: September 29, 2026

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

DECISION AND ORDER DENYING RECONSIDERATION AND DENYING INTERLOCUTORY APPEAL

This case arises under the employee protection provisions of the Surface Transportation Assistance Act (STAA) and is now before the Administrative Review Board (Board) for the second time.[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 (OALJ). The case is currently pending before Administrative Law Judge (ALJ) Theodore W. Annos. Complainant also brought a

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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).

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 discovery proceedings" in the case.[7] The following day, Complainant filed a motion seeking substantially the same relief with the ALJ.[8]

On May 20, 2026, the district court issued an order stating that a discovery conference was held and the parties agreed that Complainant "may use all assistive 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."[9] 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

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3 42 U.S.C. § 12101 et seq.

4 Petition for Review in ARB No. 2026-0061 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. A full list of the assistive technologies Complainant sought permission to use, as well as the other accommodations he requested, is contained in the Board's Decision and Order Denying Interlocutory Appeal, issued in this case on September 11, 2026.

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

counsel to afford him uninterrupted speaking time during meet and confers."[10] 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."[11]

On August 12, 2026, Complainant filed an interlocutory appeal of the ALJ's Accommodations Order with the Board, arguing that the Accommodations Order violated Section 504 of the Rehabilitation Act.[12] On September 11, 2026, the Board issued a Decision and Order Denying Interlocutory Appeal (First Decision and Order). The Board held that Complainant's appeal did not present an issue that was certified for interlocutory appeal pursuant to 28 U.S.C. § 1292(b) nor did it satisfy the collateral order exception. The Board noted that the ALJ's Accommodations Order was not effectively unreviewable on appeal from a final judgment because Complainant had a different avenue to vindicate his rights under Section 504.[13] Additionally, the Board, on appeal of a final decision, would be able to review the ALJ's discovery orders under an abuse of discretion standard.[14]

While Complainant's interlocutory appeal was pending before the Board, the ALJ issued, on August 27, 2026, an order ordering that "White's deposition shall be subject to the same accommodations provided during his deposition in the ADA proceeding[.]"[15] The ALJ clarified that these accommodations included "access to all assistive technologies except smart glasses and blue tooth ear buds, advanced production of longer exhibits (10 pages or more), and an opportunity to review shorter exhibits produced during the deposition."[16] The ALJ denied Complainant's "renewed and supplemental motion" in all other respects. On August 31, 2026,

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10 Accommodations Order at 1.

11 *See* Order on Complainant's Renewed and Supplemental Motion for Protective Order, Accommodations, and Discovery Extension at 2.

12 *See* 29 U.S.C § 794; *see also* 29 C.F.R. Part 33 (Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor).

13 First Decision and Order at 7.

14 *Id*.

15 Order on Complainant's Renewed and Supplemental Motion for Protective Order, Accommodations, and Discovery Extension at 4.

16 *Id*. at 3.

Complainant filed a "Motion to Compel Complete Discovery Responses, Production of Documents, Identification of Witnesses, and for Sanctions Pursuant to 29 C.F.R. § 18.35(c)" (Motion to Compel) with the ALJ. On August 31, 2026, Complainant sat for a deposition in this matter.

On September 11, 2026, the same day the Board issued its First Decision and Order, Complainant filed an "omnibus submission" that was titled "Petition for Review, Motion for Stay, Request for ADA Communication Accommodation, and Motion to Compel Complete Discovery" (Omnibus Filing).[17] The Omnibus Filing requests that the Board: (1) vacate the ALJ's Accommodations Order; (2) vacate the ALJ's August 27, 2026 order; (3) order the ALJ to implement Complainant's requested accommodations; (4) stay the hearing that is scheduled for October 20, 2026; (5) order that the deposition that took place on August 31, 2026, be stricken or that a new deposition with Complainant's requested accommodations occur; (6) order the ALJ to rule on Complainant's Motion to Compel; (7) order that the discovery deadline be extended; (8) order that Complainant be permitted to take depositions of certain Respondent witnesses; and (9) permit Complainant to submit filings to the Board via electronic mail.[18]

Because the Omnibus Filing seeks the same relief Complainant requested in his first interlocutory appeal, it is properly treated, in part, as a request for reconsideration of the Board's First Decision and Order. It also seeks review of ALJ orders issued after Complainant's first interlocutory appeal was filed and is thus properly treated, in part, as a new interlocutory appeal.[19] For the reasons that follow, we deny Complainant's request for reconsideration and deny Complainant's new interlocutory appeal. We grant Complainant's request to submit filings in this case via electronic mail.

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[17] The Office of the Clerk of the Appellate Boards received the Omnibus Filing via commercial delivery on September 11, 2026. Pursuant to the Board's Rules of Practice and Procedure, a document filed via mail or commercial delivery is considered filed when it is received by the Clerk of the Appellate Boards. See 29 C.F.R. § 26.3(a)(4).

[18] Omnibus Filing at 11.

[19] We assigned Complainant's first appeal ARB No. 2026-0061. This appeal is assigned ARB No. 2026-0076, and we consolidate it with ARB No. 2026-0061 in the interest of judicial efficiency.

DISCUSSION

1. Complainant's Request for Reconsideration

In Complainant's Omnibus Filing, he alleges that the ALJ's Accommodations Order "is legally defective because it never cited, applied, or analyzed the governing law; the Rehabilitation Act of 1973."[20] Complainant requests that the Board vacate the ALJ's Accommodations Order and order the ALJ to implement Complainant's requested accommodations.

The Board will reconsider a decision only under limited circumstances, including when the party seeking reconsideration has demonstrated: (i) material differences in fact or law from those presented to the Board of which the moving party could not have known through reasonable diligence; (ii) new material facts that occurred after the Board's decision; (iii) a change in the law after the Board's decision; or (iv) a failure to consider material facts presented to the Board before its decision.[21] The foregoing circumstances are not exclusive, and a complainant's inability to satisfy one is not necessarily fatal to reconsideration.[22]

Complainant has not demonstrated that any of the foregoing circumstances apply. He has not alleged any material differences in fact or law from those he presented to the Board with his initial appeal. Complainant has already presented, and we have already ruled on, his argument regarding the applicability of Part 504 of the Rehabilitation Act to proceedings before OALJ. Similarly, Complainant has not articulated any change in applicable law or demonstrated that the Board failed to consider any material facts that were before it. Complainant has, however, informed the Board of additional events that occurred after the Board accepted Complainant's first appeal.[23] Specifically, Complainant states that the Department

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[20] Omnibus Filing at 6.

[21] *Kossen v. Empire Airlines*, ARB No. 2022-0004, ALJ No. 2019-AIR-00022, slip op. at 2 (ARB July 19, 2023) (citation omitted).

[22] *Robles v. Mr. Bults, Inc.*, ARB No. 2025-0058, ALJ Nos. 2025-STA-00050, -00051, -00052, slip op. at 3 (ARB Mar. 5, 2026) (Order Denying Reconsideration) (citing *DeVoe v. Premier Trucking, LLC*, ARB No. 2025-0056, ALJ No. 2024-STA-00090, slip op. at 3 (ARB June 17, 2025)).

[23] We note that these new material facts occurred during the pendency of Complainant's first interlocutory appeal; not after the Board issued the First Decision and Order.

of Labor's Civil Rights Center (CRC) "issued a declination letter in CRC Case No. 26-EM-142."[24] This new fact does not warrant reconsideration as it does not alter the Board's analysis of whether Complainant's interlocutory appeal satisfies the collateral order exception. The Department of Labor regulations implementing Section 504 of the Rehabilitation Act channel complaints regarding program inaccessibility through CRC.[25] They do not provide the Board with any supervisory role to review or overturn decisions by CRC. Accordingly, the Board is without jurisdiction to review CRC's handling of complaints arising under Part 504 and the Department of Labor's implementing regulations.[26]

2. Complainant's New Interlocutory Appeal

In addition to seeking reconsideration of the Board's First Decision and Order, Complainant's Omnibus Filing requests that the Board "VACATE the ALJ's August 27, 2026 Order Denying Renewed Motion" on the basis that the ALJ erred when he found that the Complainant's failure to notice depositions was not excusable, and the ALJ exhibited impermissible bias when he described one of Complainant's arguments as "tiresome."[27] Complainant also requests that the Board "ORDER the ALJ to rule on Complainant's August 31, 2026 Motion to Compel."[28] Because the ALJ has not yet issued a decision fully disposing of the claims in this matter and because these requests involve both an order and a motion that were not referenced in Complainant's first appeal, we treat this as a new petition for interlocutory review.

Under the Secretary's delegation of authority, the Board may only consider and dispose of interlocutory appeals "in exceptional circumstances, provided such

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[24] Omnibus Filing at 10.

[25] 29 C.F.R. § 33.12.

[26] The Board is a tribunal of limited jurisdiction and does not have jurisdiction to hear complaints alleging noncompliance with the Rehabilitation Act or to review decisions made by CRC. *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); *see also 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); *see generally* 2 Am. Jur. 2d Administrative Law § 256 (recognizing that "[a]dministrative agencies are tribunals of limited jurisdiction[.]").

[27] Omnibus Filing at 7, 11.

[28] *Id*. at 11.

review is not prohibited by statute."[29] The Secretary of Labor and the Board have 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.[30] As explained in the Board's First Decision and Order "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)."[31] Here, Complainant did not request or receive ALJ certification.

Since Complainant has neither sought nor received ALJ certification of the issue he is appealing to the Board, we now consider whether the decision being appealed satisfies the collateral order exception. Under Board and Supreme Court precedent, the collateral order exception only 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 adjudicated."[32] As explained in the First Decision and Order, to fall within the scope of the collateral order exception, an order 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.[33]

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[29] 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).

[30] *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).

[31] First Decision and Order at 4 (citing *Marks*, ARB No. 2025-0084, slip op. at 3).

[32] *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).

[33] *See, e.g., Marks*, ARB No. 2025-0084, slip op. at 4 (citing *Kossen*, ARB No. 2023-0041, slip op. at 3); *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).

The ALJ's August 27, 2026 order does not satisfy the requirements of the collateral order exception because it is not unreviewable on appeal from a final decision, for much the same reasons we determined the Accommodations Order was not unreviewable on appeal from a final decision. Although Complainant has alleged that his deposition was conducted under "conditions that rendered it constitutionally and legally defective," he has not articulated why any alleged defects with his deposition and any prejudice resulting therefrom cannot be reviewed and, if necessary, remedied on appeal from a final decision. The Board "has repeatedly held that discovery orders are readily subject to review upon appeal of final ALJ decisions and generally will not qualify as immediately appealable collateral orders." [34] Moreover, the Board can remedy any erroneous discovery-related orders by vacating an adverse judgment and remanding for a new trial. We find no reason to depart from these general principles here.[35]

Although Complainant argues that the August 27, 2026 order "reflects impermissible bias," this does not bring it within the collateral order exception as the Board is able to review the issue of ALJ bias on appeal from a final decision. We also note that the Board "generally presumes that an ALJ is unbiased unless a party alleging bias can support that allegation; and bias generally cannot be shown without proof of an extra-judicial source of bias."[36] Complainant has offered no such proof, pointing only to a single word in the ALJ's order.

Complainant's request for the Board to order the ALJ to rule on his Motion to Compel and "compel Respondent to cure . . . outstanding discovery deficiencies" is similarly not fit for interlocutory review. As we noted recently in *Szmurlo v. ThyssenKrupp Elevator*, "[c]ourts rarely grant interlocutory appeal of discovery

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[34] *Priddle v. United Airlines, Inc.*, ARB No. 2021-0064, ALJ No. 2020-AIR-00013, slip op. at 8-9 (ARB Jan. 26, 2022) (Decision and Order Denying Interlocutory Appeal) (citations omitted).

[35] *See Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 109, 112 (2009) (recognizing that appellate tribunals can remedy erroneous evidentiary rulings by vacating and remanding).

[36] *Matthews v. Ametek, Inc.*, ARB No. 2011-0036, ALJ No. 2009-SOX-00026, slip op. at 5 (ARB May 31, 2012) (quoting *Matter of Slavin*, ARB No. 2004-0088, ALJ No. 2004-MIS-00002, slip op. at 15-18 (ARB Apr. 29, 2005)) (cleaned up); *see also March v. Metro-North Commuter R.R. Co.*, ARB No. 2021-0059, ALJ Nos. 2019-FRS-00032, -00035, slip op. at 22 (ARB Jan. 21, 2022) (noting that the Board typically "requires a party accusing an ALJ of bias to show some type of extra-judicial source to support such a conclusion[.]").

orders."[37] It is well established that "ALJ's have wide discretion to set or limit the scope of discovery and will be reversed only when such evidentiary and discovery rulings are arbitrary or an abuse of discretion."[38] It follows from this that the Board will not intervene to order a specific outcome of a discovery-related motion currently pending before the ALJ. Complainant's request that the Board order the discovery deadline be extended and order that Complainant be permitted to take depositions of certain Respondent witnesses would usurp the ALJ's role in managing discovery and has no basis in our law or precedent.

3. Complainant's Request to File via Electronic Mail

In his Omnibus Filing, Complainant requests that the Board authorize him to "communicate with and file all documents, motions, exhibits, and correspondence in ARB No. 26-0061 by email to ARB-Correspondence@dol.gov, in lieu of or in addition to EFS filing, for the duration of this appeal.[39] Given Complainant's documented difficulties with using the Board's Electronic Filing and Service (EFS) System, the Board grants him leave to file any subsequent motions in ARB No. 26-0061 and ARB No. 26-0076 via electronic mail. The Board's Rules of Practice and Procedure require that service may be completed by electronic mail only if consented to in writing by the person served and those rules are not modified by this order.[40]

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[37] *Szmurlo v. ThyssenKrupp Elevator*, ARB Nos. 2026-0025, -0026, ALJ No. 2025-SOX-00034, slip op. at 13 (ARB June 23, 2026) (Decision and Order Denying Interlocutory Appeals) (quoting *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 8 (ARB Sept. 30, 2022).

[38] *May v. AGL Services Co.*, ARB No. 2022-0015, ALJ No. 2020-PSI-00001, slip op. at 13 (ARB Sept. 14, 2023) (citation omitted).

[39] Omnibus Filing at 10.

[40] 29 C.F.R. § 26.4(a)(1).

CONCLUSION

For the foregoing reasons, we **DENY** Complainant's request for reconsideration, we **DENY** Complainant's request for interlocutory review, and we **GRANT** Complainant's request to submit filings in these matters via electronic mail. We **DENY** the other relief requested by Complainant's Omnibus Filing.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

PHILIP G. KIKO
Administrative Appeals Judge