U.S. Department of Labor Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

IN THE MATTER OF:

MICHELLE G. BARHAGHI,

COMPLAINANT,

v.

OB/GYN AFFILIATES & PROSUM,

RESPONDENT.

ARB CASE NO. 2024-0061

ALJ CASE NO. 2023-TAX-00010
ALJ LAUREN C. BOUCHER

DATE: February 27, 2026

Appearances:

For the Complainant:
S.G. Barhaghi, PhD; *Lay Representative*; Aurora, Colorado

***For the Respondent*:**
Andrew D. Ringel, Esq.; *Hall & Evans, LLC*; Denver, Colorado

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

DECISION AND ORDER REVERSING AND REMANDING

This case arises from a complaint filed by Complainant Michelle G. Barhaghi against her former employer, Respondent OB/GYN Affiliates & Prosum, alleging retaliation in violation of the whistleblower protections of the Taxpayer First Act (TFA).[1] Complainant appeals Administrative Law Judge (ALJ) Lauren C. Boucher's July 11, 2024 Order Granting Respondent's Motion for Summary Disposition, which dismissed her complaint as untimely. We reverse and remand the ALJ's decision due to an error of law and a genuine issue of material fact.

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[1] 26 U.S.C. § 7623(d); 29 C.F.R. Part 1989 (2025).

BACKGROUND

Complainant filed a complaint with the Occupational Safety and Health Administration (OSHA) in which she alleged Respondent violated the TFA by subjecting her to a hostile work environment and terminating her employment as a physician in retaliation for her internal complaints about Respondent's accounting and tax-related practices.[2] OSHA denied the complaint as untimely on April 28, 2023.[3]

Complainant filed objections to OSHA's determination with the Office of Administrative Law Judges on May 26, 2023.[4] At the hearing level, Respondent filed a Motion for Summary Disposition in which it argued Complainant's complaint should be dismissed as untimely.[5] In her opposition to Respondent's motion, Complainant asserted that her complaint was timely because S.G. Barhaghi, PhD (her office manager, father, and lay representative) (Dr. Barhaghi) called and informed OSHA of TFA violations before the 180-day deadline to file a TFA complaint.[6]

In support, Complainant submitted an affidavit from Dr. Barhaghi dated October 31, 2023.[7] Dr. Barhaghi attested that on January 4, 2023, he called "OSHA's 800 number and reported the IRS tax rules violations under OSHA's Whistleblower Protection Program" and "made repeated attempts to reach Regional OSHA agents by leaving voicemails."[8] Dr. Barhaghi stated that on February 7, 2023, an OSHA agent by the name of Luana returned his call, and, "[f]ollowing

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[2] Amended Complaint at 1-7; Order Granting Respondent's Motion for Summary Disposition at 2.

[3] April 28, 2023 OSHA Determination Letter.

[4] Complainant's Objections and Request for Hearing Before Administrative Law Judge.

[5] Order for Additional Briefing Related to Respondent's Motion for Summary Disposition (Order for Additional Briefing) at 1.

[6] Complainant's Objection to Respondent's Motion for Summary Disposition and Affidavit in Support at 6-7.

[7] Affidavit of S.G. Barhaghi, PhD in Support of Complainant's Objection to Respondent's Motion for Summary Disposition (Aff. of S.G. Barhaghi).

[8] *Id*. at 5, ¶¶ 18-19.

extensive discussions," instructed him to file a complaint under the TFA.[9] Also, according to Dr. Barhaghi, "[o]n March 2, 2023, with the assistance of OSHA agents, we formally filed an OSHA complaint."[10]

1. The ALJ's Order for Additional Briefing

In an Order for Additional Briefing Related to Respondent's Motion for Summary Decision, the ALJ noted that any assertion from Complainant that her complaint "should be considered filed as of January 4, 2023, because Dr. S.G. Barhaghi called OSHA to report IRS tax rule violations on that date" would be "problematic."[11]

To bolster this premise, the ALJ cited only Supreme Court cases outlining that generally parties cannot assert the rights or interests of others in federal court.[12] The ALJ then ordered that if Complainant intended to argue she filed her OSHA complaint on January 4, 2023 (via her father), she was to submit a brief illustrating how her situation met the standard established by federal courts in assessing third-party standing in that "(1) she has a 'close relationship' with Dr. S. G. Barhaghi; and (2) she was in some way hindered from contacting OSHA herself" to file her complaint.[13] The ALJ also ordered Complainant to clarify whether she intended to file a hostile work environment claim and to explain how her claim met three factors for such a claim.[14]

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9 *Id*., ¶ 20. Complainant also states the agent "registered" her complaint during the February 7, 2023 phone call. Petition for Review (Pet. for Review) at 3; Complainant's Opening Brief (Comp. Br.) at 4, 5, 7, 8.

10 Aff. of S.G. Barhaghi at 5, ¶ 21.

11 Order for Additional Briefing at 3.

12 *Id*. (citing *Kowalski v. Tesmer*, 543 U.S. 125, 128-29 (2004); *Warth v. Seldin*, 422 U.S. 490, 498 (1975); *Powers v. Ohio*, 499 U.S. 400, 411 (1991)).

13 The ALJ cited *Kowalski*, 543 U.S. at 129-30, and applied it to the requirements for the TFA complaint filed with OSHA here, stating: "Courts look to two factors to determine if it is necessary to grant a third party standing to assert the rights of another: (1) whether the party asserting the right has a 'close relationship' with the person who possesses the right, and (2) whether there is a 'hindrance' to the possessor's ability to protect his or her own rights." Order for Additional Briefing at 3-4.

14 *Id*. at 4-5.

In her brief in response to the ALJ's order, Complainant attempted to demonstrate her eligibility for a waiver of the general prohibition against third-party standing outlined in the ALJ's order.[15] Complainant described her "close relationship" to Dr. S.G. Barhaghi and outlined various obstacles which impeded her from filing an OSHA complaint on January 4, 2023, per the ALJ's order.[16] She also explained that she intended to file a hostile work environment claim and detailed that claim.[17]

Respondent argued Complainant's brief failed to show she met the criteria in the ALJ's order to support "utilizing the third-party standing doctrine."[18] Respondent further contended that Complainant's complaint could not be found timely without additional evidence "demonstrating the telephone call from S.G. Barhaghi occurred, was considered a complaint by OSHA, and most importantly was considered a complaint filed on behalf of Complainant . . . . [T]here is no factual basis to conclude S.G. Barhaghi actually filed a complaint with OSHA on behalf of Complainant."[19]

2. The ALJ's Order Granting Respondent's Motion for Summary Decision

In a summary decision, the ALJ determined that the complaint was untimely with respect to Complainant's alleged retaliatory termination and several adverse actions related to her hostile work environment claim.[20] Applying the Supreme Court cases previously cited in her Order for Additional Briefing[21] and Sixth Circuit cases on standing and third-party standing to bring suit in an Article III court,[22] the ALJ concluded that Complainant had "not demonstrated any legally significant hindrance to her ability to file her own OSHA complaint that would warrant third

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15 Complainant's Additional Briefing at 1-3.

16 *Id*.

17 *Id*. at 3-8.

18 Respondent's Response to Complainant's Additional Briefing at 2.

19 *Id*. at 4.

20 Order Granting Respondent's Motion for Summary Decision at 4, 8, 10.

21 Order for Additional Briefing at 3.

22 Order Granting Respondent's Motion for Summary Decision at 4.

party standing to permit Dr. S.G. Barhaghi to file a complaint on [Complainant's] behalf" on January 4, 2023.[23]

The ALJ instead found Complainant filed her complaint online on March 2, 2023.[24] The ALJ then calculated that any alleged adverse action which occurred before September 2, 2022, 180 days prior to March 2, 2023, was untimely pled.[25]

The ALJ had earlier concluded that "there is no dispute that Complainant was notified of her termination no later than August 15, 2022 (and likely before that date)" because "[o]n August 15, 2022, Dr. S.G. Barhaghi, on behalf of Complainant, sent a letter to Respondent acknowledging and responding to the termination notice" [emailed to Complainant on July 27, 2022].[26] The ALJ then found that Complainant received final and unequivocal notice of her termination outside the 180-day limitations period "no later than" August 15, 2022, such that the complaint was untimely filed in relation to her retaliatory termination claim.[27]

Next, the ALJ determined that several alleged adverse actions underlying Complainant's hostile work environment claim which occurred before September 2, 2022, were also untimely.[28] The ALJ then dispensed with the remaining "facially timely" adverse actions that took place after September 2, 2022, by deeming them "natural consequences of the alleged discriminatory acts" and thus not independently actionable to support a hostile work environment claim.[29] As a result, the ALJ dismissed the complaint.[30]

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[23] *Id*. at 3-4.

[24] "[Complainant] filed her OSHA complaint on March 2, 2023, the date she filed the online complaint." *Id*. at 4.

[25] *Id*. at 8. A complaint under the TFA "shall be filed not later than 180 days after the date on which the violation occurs." 26 U.S.C. § 7623(d)(2)(B)(iv).

[26] Order for Additional Briefing at 3.

[27] Order Granting Respondent's Motion for Summary Disposition at 4.

[28] *Id*. at 4-10.

[29] *Id*. at 8-10.

[30] *Id*. at 10.

3. Complainant's Arguments

Complainant contends that the ALJ erred in finding that the January 4, 2023 TFA complaint filed by Dr. Barhaghi, "including [the] claims of retaliatory termination and a hostile work environment,"[31] was untimely on the basis that her father lacked third-party standing to file for her.[32] She argues the ALJ should have applied 29 C.F.R. § 1989.103(a).[33] That regulation allows any person to file a TFA complaint on another's behalf.[34]

Complainant also objects to the ALJ's finding that the limitations period began accruing on August 15, 2022. She contends that Dr. Barhaghi "never discussed" Respondents' July 27, 2022 termination letter with her[35] and replied to the letter on August 15, 2022 without her knowledge.[36] Complainant avers the ALJ erred in calculating the deadline to file her complaint of retaliatory termination because she "first became aware on October 18, 2022, of Respondent's intent to terminate her employment effective November 1, 2022."[37]

Complainant argues the ALJ "fail[ed] to apply the same legal standard to comparable facts" when the ALJ determined the August 15, 2022 letter that Dr. Barhaghi sent established that Complainant herself had received notice of Respondent's intent to fire her despite finding that Dr. Barhaghi lacked standing to file the complaint for Complainant.[38]

Finally, Complainant avers that equitable tolling applies to extend the filing deadline "by at least 34 days [to April 11, 2023], accounting for the time between the initial call on January 4 and the return call on February 7, during which the

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31 Pet. for Review at 1.

32 Comp. Br. at 5-6.

33 *Id*.

34 29 C.F.R. § 1989.103(a).

35 Complainant's Reply Brief at 6.

36 *Id*. at 5.

37 Comp. Br. at 4.

38 *Id*. at 5.

Complainant was unable to obtain essential information related to the TFA claim."[39]

4. Respondent's Arguments

Respondent counters that the ALJ correctly determined Complainant's complaint was not timely filed and that the Board should thus affirm the ALJ's grant of summary decision.[40] It asserts "the ALJ correctly analyzed the third-party standing doctrine and appropriately determined Complainant had failed to demonstrate the type of permanent hindrance required for the doctrine to be invoked and apply."[41] Respondent argues Complainant did not meet the criteria for third-party standing and cites additional federal court decisions to support this argument.[42]

Respondent concedes that "third party standing precedent does not apply in this context . . . . [as such precedent] address[es] whether a third-party has standing to pursue a claim on behalf of someone else."[43] Respondent does not specifically respond to Complainant's argument the ALJ's determination was incorrect in ignoring 29 C.F.R. § 1989.103's provision allowing "any person" to file a TFA complaint on another's behalf.[44]

Respondent argues that the lack of "any actual evidence of [the complaint] being filed on behalf of Complainant . . . . [does] not render an untimely filed complaint filed by Complainant somehow timely."[45]

Respondent also contends the ALJ's determination Complainant received notice of its intent to terminate Complainant's employment no later than August 15, 2022 is "supported by the evidence in the record and is not erroneous."[46]

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39 *Id*. at 8.

40 Respondent's Answer Brief (Resp. Br.) at 14-20.

41 *Id*. at 8.

42 *Id*. at 16.

43 *Id*.

44 Resp. Br. at 15-20; 29 C.F.R. § 1989.103(a).

45 Resp. Br. at 17.

46 *Id*. at 15.

Respondent avers that "Complainant's argument the August 15, 2022, communication does not represent knowledge by Complainant herself is belied by the actual communication itself."[47] Respondent notes that the July 27, 2022 email was sent to both Complainant and Dr. Barhaghi,[48] who as her office manager, "is considered Complainant's agent for purposes of her knowledge of the Notice of Termination"[49] and that the latter acknowledged receipt on August 15, 2022.[50]

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the Board to hear appeals from ALJ decisions and issue agency decisions in cases arising under the TFA.[51] The Board conducts de novo review of the ALJ's grant of summary decision, including prehearing dismissals of claims based on untimeliness.[52]

DISCUSSION

1. The ALJ Erred as a Matter of Law in Applying the Third-Party Standing Doctrine to the Analysis of the Timeliness of the Complaint

Summary decision is appropriate when the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to [a] decision as a matter of law."[53] In reviewing an ALJ's grant of summary decision, the Board views the evidence and makes all reasonable inferences in the light most favorable to the non-moving party.[54]

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47 *Id*. at 14

48 *Id*.

49 *Id*. at 15.

50 *Id*.

51 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).

52 *Jahanbin v. Boeing Co.*, ARB No. 2024-0035, ALJ No. 2023-AIR-00023, slip op. at 3-4 (ARB Mar. 13, 2025) (citations omitted).

53 29 C.F.R. § 18.72(a).

54 *Jahanbin*, ARB No. 2024-0035, slip op. at 4 (citation omitted).

A complaint alleging retaliation in violation of the TFA's whistleblower protections must be filed within 180 days after a violation occurs.[55] The limitations period begins to run from the time a complainant receives "final, definitive, and unequivocal notice of the adverse employment action."[56] The claim accrues from the date the employer communicates to the employee its decision to implement an adverse employment decision, "rather than the date the consequences of the decision are felt."[57]

First, we agree with Complainant that the ALJ erred in determining that Complainant's father's telephonic filing of her TFA complaint on January 4, 2023, could not be counted as the date of the complaint's filing by virtue of the third-party standing doctrine. The federal cases applied by the ALJ and cited in Respondent's brief on the doctrine are inapposite. They entail third parties themselves attempting to pursue causes of action which assert the rights and interests of others

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[55] 26 U.S.C. § 7623(d)(2)(B)(iv); 29 C.F.R. § 1989.103(d).

[56] *Mehrotra v. Gen. Elec. Co.*, ARB No. 2022-0060, ALJ No. 2022-SOX-00014, slip op. at 4-5 (ARB Sept. 21, 2023) (citations omitted); *see also Delaware State Coll. v. Ricks*, 449 U.S. 250, 258 (1980) (". . . the filing limitations periods therefore commenced—at the time the [adverse action] decision was made and communicated . . . . ").

[57] *Mehrotra*, ARB No. 2022-0060, slip op. at 5 (citing *Chardon v. Fernandez*, 454 U.S. 6, 8 (1981) (other citations omitted)); *see also Peters v. Am. Eagle Airlines, Inc*. ARB No. 2008-0126, ALJ No. 2007-AIR-00014, slip op. at 5 (ARB Sept. 28, 2010) ("The time for filing a complaint begins when the employee knew or should have known of the adverse action, regardless of the effective date. The focus is on the time of the alleged discriminatory act, not on the point at which 'the *consequences* of the act become painful.'") (quoting *Ricks*, 449 U.S. at 258).

beyond the case's inception and throughout suit in federal courts.[58] By contrast, the inquiry here concerns Dr. Barhaghi's initiation of Complainant's claim with OSHA. While he has acted as her lay representative, he has not sought to supplant Complainant as the party in this matter.

Second, the ALJ's determination is contrary to the TFA. The TFA provides that "[a]n action under subparagraph (A)(i) [on filing a TFA complaint with the Secretary of Labor] shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code."[59] In turn, 49 U.S.C § 42121(b) sets forth that "[a] person who believes that he or she has been discharged or otherwise discriminated against by any person . . . may . . . file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination."[60]

Third, the ALJ's determination is inconsistent with the TFA's implementing regulations, which state that "[a] person who believes that they have been discharged or otherwise retaliated against by any person in violation of [the] TFA may file, *or have filed by any person on their behalf,* a complaint alleging such

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[58] The cases cited by the ALJ and Respondent involve petitioners pursuing the rights or interests of others not participating in the suit. *See* Order Granting Respondent's Motion for Summary Decision at 3-4 (citing *Kowalski*, 543 U.S. at 127 (attorneys denied standing in seeking to invoke the rights of hypothetical indigent defendants); *Warth*, 422 U.S. at 493 (organizations and city residents denied standing in suing municipality for exclusion of low and moderate income residents from zoning plan); *Powers*, 499 U.S. at 415 (concluding a criminal defendant can raise the third-party equal protection claims of jurors excluded from jury service by the prosecution on the basis of race); *Moody v. Mich. Gaming Control Bd.*, 847 F.3d 399, 401-03 (6th Cir. 2017) (son denied standing in suit to redress father's exclusion from gaming board); *Smith v. Jefferson Cnty. Bd. of Sch. Comm'rs*, 641 F.3d 197, 208-09 (6th Cir. 2011) (teachers denied third-party standing in portion of suit seeking redress on behalf of students impacted by school closure)); *see* Resp. Br. at 16 (citing *Aid for Women v. Foulston,* 441 F.3d 1101, 1109-14 (10th Cir. 2006) (health care and social service professionals granted third-party standing in suit challenging constitutionality of statute on behalf of minor patients); *McDonald v. Van Houtte,* 160 F. App'x 673, 674-75 (10th Cir. 2005) (husband denied standing in 42 U.S.C. § 1983 suit against police department alleging unlawful arrest and prosecution of wife); *RK Ventures, Inc. v. City of Seattle,* 307 F.3d 1045, 1054-55 (9th Cir. 2002) (business owners lacked third-party standing to pursue equal protection challenge to city ordinances on behalf of former patrons); *Flood v. NCAA,* No. 1:15-CV-890, 2015 WL 5785801, at *4-5 (M.D. Pa. Aug. 26, 2015) (sports fan lacked third-party standing to sue NCAA on behalf of Penn State athletes)).

[59] 26 U.S.C. § 7623(d)(2)(B)(i).

[60] 49 U.S.C § 42121(b)(1).

retaliation."[61] Moreover, "*[n]o particular form of complaint is required*. A complaint may be filed orally or in writing. Oral complaints will be reduced to writing by OSHA."[62] And, *"[t]he date of the . . . telephone call . . . will be considered the date of filing*."[63]

Thus, Complainant's TFA complaint need not have been in any particular form and the complaint could have been filed for Complainant by her father via telephone on her behalf.[64] Accordingly, the ALJ erred in failing to apply 49 U.S.C § 42121(b) and 29 C.F.R. § 1989.103 and summarily determining the Complainant's retaliatory termination and several hostile work environment claims were untimely for lack of third-party standing.

2. Complainant Raised a Genuine Issue of Material Fact that the Complaint was Timely Filed

While the ALJ did not determine whether there was a genuine issue of material fact that Dr. Barhaghi filed a complaint on Complainant's behalf on January 4, 2023, Respondent has failed to identify evidence controverting Dr. Barhaghi's attestation or to demonstrate how Dr. Barhaghi's affidavit does not create a genuine dispute that he did so.[65]

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61 29 C.F.R. § 1989.103(a) (emphasis added).

62 *Id*. § 1989.103(b) (emphasis added).

63 *Id*. § 1989.103(d) (emphasis added).

64 *Id*. § 1989.103(a)-(b), (d). We interpret "may . . . have filed by any person on their behalf . . . . " to mean that any individual may file the complaint for an employee, however, such filing must occur with the employee's consent. 29 C.F.R. § 1989.103(a). "With the consent of the employee, complaints may be filed by any person on the employee's behalf." Interim Final Rule, *Procedures for the Handling of Retaliation Complaints Under the Taxpayer First Act (TFA),* 87 Fed. Reg. 12575, 12578 (Mar. 7, 2022). The Final Rule adopted the Interim Final Rule "as final, without change," but for a technical change unrelated to the procedures on filing a TFA complaint with OSHA. Final Rule, *Procedures for the Handling of Retaliation Complaints Under the Taxpayer First Act (TFA)*, 88 Fed. Reg. 15271, 15272 (Mar. 13, 2023).

65 Aff. of S.G. Barhaghi at 5, ¶¶ 18-23. We infer that Dr. Barhaghi placed the call on January 4, 2023, with Complainant's consent given that his affidavit also states: "[o]n March 2, 2023 . . . *we* formally filed an OSHA complaint"; "[s]ubsequently, *we* were interviewed by OSHA's investigators . . . . "; and "[t]hroughout the course of the investigation, *we* were consistently informed that the complaint was timely . . . . " *Id*., ¶¶ 21-23 (emphasis added).

Respondent has argued that the lack of "additional" or "actual" evidence beyond Dr. Barhaghi's affidavit which shows Dr. Barhaghi filed a complaint on January 4, 2023 cannot make the complaint timely.[66] Even so, an affidavit submitted by the non-moving party, based on the personal knowledge of the affiant, and containing facts admissible into evidence is sufficient to overcome a motion for summary decision even when "made for purposes of [opposing] the motion only."[67]

Moreover, Respondent has not cited to any material in the record negating the contents of Dr. Barhaghi's affidavit nor has Respondent demonstrated how the affidavit fails to establish a genuine dispute as to the timely filing of the TFA complaint.[68] As it is Respondent's burden, we conclude that Respondent fell short in asserting that the timing of the filing of the complaint could not be genuinely disputed.[69] Construing Dr. Barhaghi's affidavit together with all the facts in the light most favorable to Complainant, we conclude there is a genuine dispute as to the date of the filing of the complaint. Even presuming the date on which Complainant received notice of Respondent's intent to terminate her employment was July 8, 2022 (the earliest date on which Respondent alleges it communicated that intent), a fact finder could determine the complaint was timely filed.[70]

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66 Respondent's Response to Complainant's Additional Briefing at 4; Resp. Br. at 17.

67 "A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (i) Citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (ii) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." 29 C.F.R. § 18.72(c)(1)."So long as an affidavit is 'based upon personal knowledge and set[s] forth facts that would be admissible in evidence, it is legally competent to oppose summary judgment, irrespective of its self-serving nature.'" *Sanchez v. Vilsack,* 695 F.3d 1174, 1180 n.4 (10th Cir. 2012) (citations and internal quotation marks omitted).

68 29 C.F.R. § 18.72(c)(1).

69 *See Vinnett v. Mitsubishi Power Sys.*, ARB No. 2008-0104, ALJ No. 2006-ERA-00029, slip op. at 7 (ARB July 27, 2010) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)) ("The party bringing the motion for summary decision bears the burden of proof.").

70 Respondent's Statement of Undisputed Material Facts in Support of Respondent's Motion for Summary Disposition at 2 (citing Bubier Affidavit at ¶¶ 11, 12).

As a matter of law, Dr. Barhaghi could file Complainant's TFA complaint for her, and there is a genuine dispute as to whether he did so on January 4, 2023.[71] Accordingly, we reverse the ALJ's summary determination the complaint was untimely filed with respect to her retaliatory termination claim and the alleged adverse actions underlying the hostile work environment claims that the ALJ concluded were actionable.[72]

CONCLUSION

For the foregoing reasons, we **REVERSE** the ALJ's Order Granting Respondent's Motion for Summary Disposition, and **REMAND** this matter for further proceedings consistent with this opinion.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge

PHILIP G. KIKO
Administrative Appeals Judge

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[71] It is therefore unnecessary for the Board to decide the remaining issues Complainant raises on appeal.

[72] As Complainant did not specifically argue, however, that the ALJ otherwise erred in finding that some of her "facially timely allegations [of a hostile work environment] are not themselves discriminatory acts but are simply natural consequences of the alleged discriminatory acts" and were thus not actionable, she has waived arguments appealing this determination. Order Granting Respondent's Motion for Summary Disposition at 10. It is a "settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived." *Dev. Res., Inc.*, ARB No. 2002-0046, slip op. at 4 (ARB Apr. 11, 2002) (quoting *Tolbert v. Queens Coll.*, 242 F.3d 58, 75 (2d Cir. 2001)).