U.S. Department of Labor

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

IN THE MATTER OF:

JOSE CAYCHO,	**ARB CASE NO. 2025-0019**
COMPLAINANT,	**ALJ CASE NO. 2024-TAX-00009**
v.	**DISTRICT CHIEF ALJ PAUL C. JOHNSON, JR.**
JUST SOD, LLC,	**DATE: September 17, 2026**
RESPONDENT.	

Appearances:

For the Complainant:
Jose Caycho; *Pro Se*; Denver, Colorado

For the Respondent:
Christopher D. Yost, Esq.; *Adams and Reese, LLP*; Northglenn, Colorado

Before KAPLAN and BURRELL, Administrative Appeals Judges

DECISION AND ORDER REVERSING AND REMANDING

This case arises under the employee-protection provisions of the Taxpayer First Act (TFA) and its implementing regulations.[1] On July 17, 2023, Complainant filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging retaliation under TFA, and on March 22, 2024, OSHA issued findings (OSHA Dismissal) dismissing the complaint.[2] The OSHA Dismissal noted that there was insufficient evidence to establish employer knowledge of the alleged protected

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[1] 26 U.S.C. § 7623(d); 29 C.F.R. Part 1989 (2026).

[2] OSHA Dismissal at 1.

activity or that Complainant had been subjected to an adverse employment action.[3] The OSHA Dismissal also noted how the Complainant could file objections and request a hearing before an Administrative Law Judge (ALJ).[4] Complainant subsequently sent several emails to the Office of Administrative Law Judges (OALJ).

On November 1, 2024, an ALJ issued an Order that granted Respondent's Motion for Summary Decision and dismissed Complainant's case (ALJ Dismissal Order). The ALJ found that Complainant did not file proper or timely objections to the OSHA Dismissal Letter, as required by 29 C.F.R. § 1989.106.[5]

We reverse and remand the ALJ Dismissal Order because the record shows that Complainant timely filed his objections.

BACKGROUND

On March 22, 2024, OSHA dismissed Complainant's case. The OSHA Dismissal noted that Complainant had "30 days from the receipt of these Findings to file objections and to request a hearing before an" ALJ and noted that objections could be sent to a specified OALJ email address.[6]

Subsequently, in the ALJ Dismissal Order, the ALJ concluded that the 30-day deadline for Complainant to file objections to the OSHA Dismissal was April 21, 2024.[7] The ALJ noted that Complainant emailed a specified OALJ email address on April 19, 2024 "requesting an extension of time to file his objection" and Complainant "followed up with a second email on April 22, 2024."[8] However, the ALJ highlighted that "neither the April 19 nor the April 22 email copied the parties identified in the" OSHA Dismissal and Complainant "did not copy the parties identified in the regulations."[9] The ALJ also found that there was "no documentation in the case file showing a valid objection or request for a hearing" by

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3 *Id.* at 3.

4 *Id.*

5 ALJ Dismissal Order at 3-4.

6 OSHA Dismissal at 3.

7 ALJ Dismissal Order at 3.

8 *Id.*

9 *Id.*

the 30-day deadline.[10] Accordingly, the ALJ determined that there was no "dispute of material fact that Caycho did not timely file objections to the Secretary's Findings of March 22, 2024 or that he did not timely request a hearing on his complaint," and the ALJ dismissed the case.[11]

DISCUSSION

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."[12] 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.[13] 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.[14] 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.[15] If the non-moving party fails to show an essential element of their case, there can be no "genuine issue as to any material fact," since a complete failure of proof concerning an essential element necessarily renders all other facts immaterial.[16]

On September 18, 2024, Respondent filed a motion for summary decision arguing that Complainant filed untimely objections to the OSHA Dimissal, and Complainant responded by arguing summary decision was inappropriate.[17]

On November 1, 2024, the ALJ found Complainant failed to file timely and valid objections that properly copied the appropriate parties in accordance with TFA requirements. As discussed below, we disagree because the record shows that

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10 *Id.* at 4.

11 *Id.*

12 29 C.F.R. § 18.72.

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

14 *Id.* (citation omitted).

15 *Id.* (citation omitted).

16 *Id.* (citation omitted).

17 D. & O. at 1; Complainant Response to Motion for Summary Decision.

Complainant filed an objection in his April 22, 2024 email and the objection was timely. Moreover, TFA's service provisions are precatory, not mandatory—therefore Complainant's failure to properly serve his objections do not invalidate the objections or make them untimely.[18]

First, we examine how the record shows that Complainant's April 22, 2024 email constituted an objection to the OSHA Dismissal and met the TFA's minimal requirements to be considered an objection. The TFA regulations regarding objections to OSHA findings note that: "The objections and request for hearing and/or request for attorney fees must be in writing and must state whether the objections are to the findings, the preliminary order, or both . . . ."[19]

Pro se filings are construed liberally,[20] and here, Complainant sent an email objecting to the OSHA Dismissal and requesting an ALJ hearing—thereby meeting the TFA objection requirements. In particular, on April 22, 2024, Complainant emailed a specified OALJ email address and the email included the following subject line: "RE: please I need answer of a motion of extension of time to file objections to the DOL OSHA Whistleblower finding." Here, the subject line clearly expressed an interest in filing objections to the OSHA Dismissal. However, more importantly, the email itself reveals that Complainant was not merely seeking an extension but objecting to the OSHA Dismissal and requesting a hearing with an ALJ. The emails states:

> ***My case is to file objections under the Taxpayer First Act directly before the ALJ*** so, I was informed by the DOL OSHA Whistleblower Office of Denver[.] Please I need to declare the necessity to send a written request for a hearing to the Deputy commissioner to contest issue of fact

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[18] *Cf. Brock v. Pierce Cnty.*, 476 U.S. 253, 266 (1986) ("We hold that CETA's requirement that the Secretary 'shall' take action within 120 days does not, standing alone, divest the Secretary of jurisdiction to act after that time."); *Liesegang v. Sec'y of Veterans Affs.*, 312 F.3d 1368, 1377 (Fed. Cir. 2002) ("In the absence of any consequences for [agency] noncompliance, those timing provisions are at best precatory rather than mandatory.").

[19] 29 C.F.R. § 1989.106.

[20] The "ARB construes arguments for self-represented litigants liberally in deference to their lack of training in the law," while also "refrain[ing] from becoming an advocate for the pro se litigant." *Davenport v. LTI Trucking Servs. Inc.*, ARB No. 2017-0070, ALJ No. 2016-STA-00015, slip op. at 6 (ARB Oct. 31, 2019) (citation and quotations omitted).

> and law before he delivers it to the Administrative Law Judge.[21]

The TFA objection requirements are minimal, and Complainant met them with his April 22, 2024 email.

Next, the record shows that Complainant filed a *timely* objection in his April 22, 2024 email. The TFA regulations note that "[a]ny party who desires review" of OSHA findings "must file any objections and/or a request for a hearing on the record ***within 30 days of receipt of the findings***."[22] For determining deadlines here, we note that OSHA issued the dismissal letter on March 22, 2024 and 30 days after was April 21, 2024. However, April 21, 2024 was a Sunday, and the regulations for computing time related to deadlines highlight that "if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of *the next day that is not a Saturday, Sunday, or legal holiday*."[23] Therefore, here, the actual deadline to file objections was Monday, April 22, 2024—the date Complainant sent his objections. Accordingly, Complainant met the timeliness requirement.

Finally, even though Complainant did not meet the TFA regulatory provisions to copy certain parties, the regulatory provisions are precatory, not mandatory.[24] The regulations state:

> Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. OSHA and the Associate Solicitor for Fair Labor Standards may

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21 April 22, 2024 Email to OALJ (emphasis added).

22 29 C.F.R. § 1989.106 (emphasis added).

23 29 C.F.R. § 18.32 (emphasis added).

24 *Cf. Brock*, 476 U.S. at 266 ("We hold that CETA's requirement that the Secretary 'shall' take action within 120 days does not, standing alone, divest the Secretary of jurisdiction to act after that time."); *Liesegang*, 312 F.3d at 1377 ("In the absence of any consequences for [agency] noncompliance, those timing provisions are at best precatory rather than mandatory.").

> specify the means, including electronic means, for serving then [sic] with copies of the objections.[25]

It appears that Complainant did fail to meet these provisions. Nonetheless, there is no stated consequence attached these particular regulatory provisions—thus, they are merely precatory, not mandatory.[26] Accordingly, Complainant's failure to properly serve his objections do not invalidate them or make them untimely.[27] ALJs (and the ARB for that matter) still have recourse when a party fails to serve the opposing and other necessary parties—for example, they may issue an order requiring a party to serve the document in question on the necessary parties within a certain number of days subject to dismissal of the action.

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[25] 29 C.F.R. § 1989.106.

[26] In contrast, the regulations attach a consequence to the failure to file timely objections. Therefore, that particular obligation is mandatory. 29 C.F.R. § 1989.106. ("If no timely objection is filed with respect to either the findings or the preliminary order, the findings and/or the preliminary order will become the final decision of the Secretary, not subject to judicial review.").

[27] In its Motion for Summary Judgement, Respondent argued that it should be awarded attorney's fees for defending against Complainant's frivolous and vexatious claims. Motion for Summary Judgment at 6. In the ALJ Dismissal Order, the ALJ acknowledged his authority to award Respondent reasonable attorney's fees at 29 C.F.R. § 1989.109(d)(2), but the ALJ denied the particular request for sanctions.

CONCLUSION

The record shows that Complainant filed a timely objection to the OSHA Dismissal and requested a hearing. Accordingly, we **REVERSE** the ALJ Dismissal Order, and **REMAND** for further proceedings consistent with this Order.[28]

SO ORDERED.

ELLIOT M. KAPLAN
Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge

[28] Complainant has submitted other filings to the Board, including a "Motion for Leave to File Amicus Curiae and Supplement the Record with Forensic Report." Given our decision to reverse the ALJ Dismissal Order and remand this matter, Complainant's other filings are moot.