

U.S. Department of Labor

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



IN THE MATTER OF:

RUSSELL MARKS,

ARB CASE NO. 2025-0084

COMPLAINANT,

ALJ CASE NO. 2025-TAX-00017

ALJ THERESA C. TIMLIN

v.

DATE: December 16, 2025

CONOPCO, INC., d/b/a UNILEVER

RESPONDENT.

Appearances:

For the Complainant:

Russell Marks; *Pro Se*; New York City, New York

For the Respondent:

Samantha Thomas, Esq., and Jonathan M. Carrillo, Esq.; *Littler Mendelson, P.C.*; Newark, New Jersey

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

ORDER DENYING RECONSIDERATION

This case arises under the Taxpayer First Act (TFA) and its implementing regulations.¹ On August 5, 2025, a United States Department of Labor Administrative Law Judge issued an order (ALJ Order) denying Complainant Russell Marks’s request that the ALJ recuse herself from these proceedings. On August 15, 2025, Complainant emailed the Administrative Review Board (ARB or Board), asking the Board to “rule on my request for Judge Timlin to recuse herself due to conflict of interest?” The Board construed Complainant’s email as a Petition for Review.

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

Because the ALJ had not yet issued a decision fully disposing of all claims in Complainant's complaint, the Petition was for interlocutory review (i.e., review of a non-final decision).² The Board may only consider and dispose of interlocutory appeals "in exceptional circumstances, provided such review is not prohibited by statute."³ The Board generally does not accept petitions for review of non-final orders issued by an ALJ. 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.⁴

Accordingly, the Board issued an Order to Show Cause on August 26, 2025, ordering Complainant to file a brief by September 9, 2025, explaining why the Board should not dismiss this interlocutory appeal. The Board cautioned Complainant that "[f]ailure to timely respond to this Order may result in dismissal of the appeal without further order." The Board sent the Order to Show Cause to Complainant via certified mail and to the email address Complainant used to file his Petition with the Board.⁵

On September 8, 2025—the day before his response was due—Complainant responded to the email in which the Board sent him a copy of the Order to Show Cause. In his response, Complainant stated: "Good morning. Unfortunately I have a medical emergency and need an extension on the deadline to respond. Please see attached from my doctor. Can you move this deadline out 30 days please." Complainant attached a note from an urgent care center dated August 26, 2025, stating "[p]lease excused from work/school due to a medical condition from 8/26 to until he is seen by a specialist in 1-2 weeks for reevaluation." The note did not elaborate on Complainant's medical conditions, and Complainant has not submitted any other information regarding his unspecified medical conditions.

² See *Gloss v. Tata Chems. N. Am.*, ARB No. 2022-0054, ALJ No. 2020-CAA-00008, slip op. at 2 (ARB Sept. 20, 2022).

³ Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13,186 (Mar. 6, 2020).

⁴ *Gunther v. Deltek, Inc.*, ARB Nos. 2012-0097, -0099, ALJ No. 2010-SOX-00049, slip op. at 2 (ARB Sept. 11, 2012) (citations omitted).

⁵ The mailed copy of the Order to Show Cause was returned to the Board as unclaimed. However, as explained below, the Board can confirm that Complainant received the Order to Show Cause via email, because he responded to it.

At Complainant's request, the Board issued an Order Granting Extension of Time on September 10, 2025, extending Complainant's deadline to file a response to October 9, 2025. Again, the ARB cautioned Complainant that "if he fails to file a timely and conforming brief in response to the Order to Show Cause, the Board may dismiss this appeal without further notice." The Board also stated that "further extension requests by Complainant will not be granted, unless justified by extraordinary circumstances and supported by appropriate documentation." Once again, the Board sent the Order Granting Extension of Time to Complainant via certified mail and email.⁶ Despite the Board's warnings, Complainant did not file a response to the Order to Show Cause, and the Board received no further extension requests or other communications from Complainant.

The Board issued a Decision and Order Denying Interlocutory Appeal (D. & O.) on November 20, 2025, dismissing Complainant's appeal on two independent grounds. First, the ARB dismissed the appeal for Complainant's failure to file a response brief. The Board has the inherent "power to dismiss a case for failure to prosecute in an effort to control its docket and to promote the efficient disposition of its cases."⁷ Pursuant to this authority, the Board "may dismiss a complaint in a case in which the complainant failed to comply with the Board's orders."⁸

Second, and independently, the Board dismissed the appeal because it did not involve "exceptional circumstances" that would justify immediate interlocutory review by the Board. Specifically, the Board noted that it will typically only consider an interlocutory appeal if it meets the "collateral order" exception, which applies if the order appealed: (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.⁹ This exception is strictly construed to avoid the "hazard that piecemeal appeals will burden the efficacious

⁶ Once again, the Order Granting Extension of Time was returned to the Board as unclaimed.

⁷ *Gonzales v. Global Crossing Airlines*, ARB No. 2025-0040, ALJ No. 2024-AIR-00029, slip op. at 2 (ARB May 16, 2025) (citation omitted) (dismissing appeal where complainant failed to file opening brief or respond to order to show cause).

⁸ *Id.* (citation omitted).

⁹ *Kossen v. Asia Pacific Airlines*, ARB No. 2023-0041, ALJ No. 2023-AIR-00001, slip op. at 3 (ARB Aug. 22, 2023) (citation omitted).

administration of justice and unnecessarily protract litigation.”¹⁰ We determined that Complainant’s appeal, which only challenged the ALJ’s decision not to recuse herself from these proceedings, was not appropriate for immediate interlocutory review because disqualification issues are fully reviewable on appeal from the ALJ’s final decision.¹¹ As before, the Board sent the D. & O. to Complainant on November 20, 2025 via certified mail and email.¹²

On November 23, 2025, Complainant responded to the email in which the Board sent him a copy of the D. & O. Complainant stated “[t]hank you for this email, but I did not receive any of the ‘ORDER TO SHOW CAUSE’.” He also stated that his email box has been full for months and that he has had “extensive medical issues and couldn’t meet the tight deadlines regardless.” He offered to provide documentation of his medical conditions and of his full inbox, and asked “if I’m able to appeal since I didn’t receive these orders to show cause and since I have multiple medical conditions.” Complainant sent another email on November 24, 2025, forwarding an earlier email he sent to the Office of Administrative Law Judges claiming that he had not received correspondence from the ALJ because his email box was full, and again stating that he had been dealing with health issues. Complainant also left a voicemail with the Board on November 26, 2025, reiterating that he had not received the Order to Show Cause because his email box was full. Complainant then sent a third email to the Board on November 30, 2025, stating that he had come across “URGENT evidence” regarding the retaliation underlying his case before the Department of Labor.¹³

We interpret Complainant’s November 23, 2025 email as a motion for reconsideration, which we deny. First, even if we accepted as true that Complainant did not receive our prior orders and did not have the opportunity to respond, we would still have denied Complainant’s appeal because it is not appropriate for

¹⁰ *Greene v. U.S. Env’t Prot. Agency*, ARB No. 2002-0050, ALJ No. 2002-SWD-00001, slip op. at 4 (ARB Sept. 18, 2002) (citation omitted).

¹¹ *See Manoharan v. HCL Am., Inc.*, ARB No. 2021-0031, ALJ Nos. 2018-LCA-00029, 2021-LCA-00009, slip op. at 4 (ARB June 30, 2021).

¹² Tracking information shows that the D. & O. has not yet been claimed.

¹³ Complainant also copied the Board on an email to the Office of Administrative Law Judges on December 8, 2025. Complainant is directed not to copy the ARB on correspondence with the Office of Administrative Law Judges or others. The ARB can and will only consider matters of record properly submitted to it as part of an accepted, pending appeal.

immediate interlocutory review. As stated in our Order to Show Cause and in our D. & O., the Board generally does not accept petitions for review of non-final orders issued by an ALJ, and 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.¹⁴ The Board has also previously and squarely held that ALJ disqualification issues are fully reviewable on appeal from the ALJ's final decision, and the Board does not accept them for interlocutory review.¹⁵

Additionally, although Complainant claims now that he did not receive the Board's Order to Show Cause, the record reflects that he did, in fact, receive that Order. As stated above, the Board sent Complainant a copy of the Order to Show Cause via email on August 26, 2025 (to the email address Complainant used to file his petition with the Board). Complainant later responded to that email, asking for more time to respond to the Order to Show Cause, which the Board granted. Thus, while we ordinarily afford certain latitude and leniency to pro se litigants, in this case it is clear that Complainant received the Board's Order and simply did not respond to it as required.¹⁶

Finally, Complainant's assertion that he suffers from various health issues that prevented him from "meet[ing] the tight deadlines" does not justify his failure to respond to the Order to Show Cause in a timely fashion in this case. Although Complainant has never identified or described his health conditions or how they inhibited his ability to respond in this appeal, we recognize and appreciate that Complainant may indeed have had conditions that could have justified accommodation, like extensions of time. Indeed, the Board granted Complainant's one and only request to extend the deadline to respond to the Order to Show Cause. However, by the time the Board issued the D. & O., Complainant had already had 86 days to respond to the Board's Order to Show Cause—far more than the original,

¹⁴ *Gunther v.* ARB Nos. 2012-0097, -0099, slip op. at 2 (citations omitted).

¹⁵ *Manoharan*, ARB No. 2021-0031, slip op. at 4 (citation omitted).

¹⁶ Likewise, Complainant's explanation that his email inbox was full does not appear to be entirely credible, because Complainant clearly received and responded to at least two of the Board's three orders in this case via email. Additionally, a full email inbox does not provide sufficient justification for missing an order in this case. By Complainant's own admission, this was allegedly a long-term, known problem for Complainant, which Complainant should have resolved, particularly since he frequently used email to correspond with the Board.

standard 14-day deadline and far more than the additional 30 days Complainant requested and received. Had Complainant needed even more time, he should have filed a second request for extension before the Board issued its decision.

Accordingly, Complainant's motion for reconsideration is **DENIED**.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge