

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

DANNY HO,

Plaintiff,

v.

CASE NO. 8:21-cv-2038-WFJ-AAS

DEPARTMENT OF LABOR,
Administrative Review Board and
JAMES D. MCGINLEY, Chief
Administrative Law Judge,

Defendants.

ORDER

Before the Court is Plaintiff's amended motion for a Clerk's default (Dkt.

11). The motion is denied for the following reasons.

The rambling, incoherent complaint appears to take issue with a discovery ruling made by the federal administrative law judge (ALJ), which resulted in the sanction of dismissal in January 2020. Dkt. 1-1 at 195–202. An ALJ may not be sued for acts or omissions occurring in connection with duties performed on the United States' behalf. *Smith v. Shook*, 237 F.3d 1322, 1325 (11th Cir. 2001). The ALJ enjoys absolute immunity from suit so long as he or she did not act in the clear absence of jurisdiction. The ALJ clearly possessed jurisdiction in the

pending matter before the Department of Labor. The case against the ALJ is therefore dismissed.

Plaintiff appealed that decision (of January 2020) to the agency's administrative review board. The June 30, 2021 order, which is attached to the complaint, affirms the sanction of dismissal of his "AIR21" case under 49 U.S.C. § 42121. Dkt. 1-1 at 250–255. Plaintiff may be attempting to seek judicial review of the decision of the Administrative Review Board issued June 30, 2021, although it is unclear from the complaint. Section 42121(b) (2)(B)(i) provides that a complaint shall be dismissed if the complainant fails to make the required showing to conduct investigation. In Plaintiff's case, discovery had begun, but the ALJ dismissed the complaint as a sanction for Plaintiff's failure to comply with discovery. Section 42121(b)(4)(A) provides that a final order issued after a hearing may be reviewed by the United States Court of Appeals. Any person aggrieved by an order issued pursuant to the procedures in § 42121(b), may obtain review of the order in the United States court of appeals. 49 U.S.C. § 20109(d)(4).

Plaintiff's motion (Dkt. 11) is denied. Plaintiff's complaint is dismissed without prejudice. Plaintiff may file an amended complaint setting forth exactly what he is seeking in this United States District Court. Any amended complaint must be filed on or before November 17, 2021, failing which this case will be dismissed without further notice.

DONE AND ORDERED at Tampa, Florida, on November 2, 2021.



WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE