

2025 WL 2306946

Only the Westlaw citation is currently available.

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P.

32.1

United States Court of Appeals, Seventh Circuit.

THOMAS R. MAY, Petitioner,

v.

UNITED STATES DEPARTMENT OF
LABOR, ADMINISTRATIVE REVIEW

BOARD, Respondent,

and

AGL SERVICES COMPANY,

Intervenor-Respondent.

No. 23-3152

|
Submitted November 5, 2024*

|
Decided August 11, 2025

Petition for Review of a Decision of the Administrative
Review Board.

No. 2022-0015

No. 2020-PSI-00001

ORDER

*1 Thomas May filed an administrative whistleblower complaint after he raised safety concerns with his former employer—a protected activity under labor laws—and lost his job. An Administrative Law Judge (ALJ) and the Administrative Review Board (ARB) at the Department of Labor found that May’s protected activity was not a factor in his termination. Because May fails to engage with the decisions of the ALJ and ARB, we deny his petition for review.

May was a fire investigator for AGL Services Company. AGL distributes natural gas to the suburbs of Chicago through a related entity, Nicor, Inc. Months into his

employment, May internally raised concerns that he believed Nicor’s newly installed gas meters had caused four residential fires. May’s supervisors and higher-level executives investigated his concerns and even included him in some of these efforts. As it turns out, only one of the four homes that caught fire had the newly installed gas meters.

May continued to voice his concerns. He even filed an ethics complaint against his supervisor, Tommy Sipsy, alleging that Sipsy retaliated against him for airing the safety issues. The ethics complaint was later found to be unsubstantiated and based mostly on conduct predating and unrelated to the residential fires. During, and shortly after, this investigation into May’s ethics complaint, May mistreated Sipsy twice.

First, during a performance review meeting, May yelled at Sipsy and chastised him about his level of education and “unethical” conduct. May also told Sipsy that May was going to “destroy” him. May later testified that Sipsy was “gulping, sweating, and trembling” throughout the interaction. After the incident, AGL hired an outside investigator to determine whether May’s treatment of Sipsy violated the company’s ethics code.

Second, about a month later, May emailed Sipsy. May added three people to the email—Sipsy’s supervisor, AGL’s in-house counsel, and the investigator assigned to May’s ethics complaint. In the email, May called Sipsy, among other things, “an ethically-challenged individual” attempting to “promulgate a fabricated untruth,” and he asked Sipsy to “cease with the unprincipled buffoonery.” After this email incident, AGL suspended and then terminated May.

May filed a whistleblower complaint with the Department of Labor’s Occupational Safety and Health Administration, which found no probable cause for his allegations. He then appealed to an ALJ and then the Department’s ARB. Both the ALJ and ARB concluded that May had failed to show his protected activity—raising safety concerns—was a contributing factor in his suspension and termination.

“Our review of the ARB’s decision is guided by the standard set forth in the Administrative Procedure Act, 5 U.S.C. § 706.” *Roadway Exp., Inc. v. U.S. Dep’t of Lab.*, 612 F.3d 660, 664 (7th Cir. 2010) (citing 49 U.S.C. § 31105(d)). “We may overturn ARB’s legal conclusions only if they are ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.’ ” *Id.* (citing 5 U.S.C. § 706(2)(A)). And we must uphold

ARB's findings of fact if they are "supported by substantial evidence." *Id.* (first citing 5 U.S.C. § 706(2)(E); and then citing *Roadway Exp., Inc. v. U.S. Dep't of Labor*, 495 F.3d 477, 483 (7th Cir. 2007) [hereinafter *Roadway I*]). A decision by the ARB meets the substantial evidence standard when it relies on "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* (citing *Roadway I*, 495 F.3d at 483). "Under this deferential standard of review, we may not set aside an inference merely because we find the opposite conclusion more reasonable." *Id.* (citation modified) (citing *Addis v. Dep't of Labor*, 575 F.3d 688, 690 (7th Cir. 2009)). Finally, "[a]s in other administrative contexts, we review the ARB's decision as supplemented by the ALJ's reasoning." *Samson v. U.S. Dep't of Lab., Admin. Rev. Bd.*, 732 F. App'x 444, 446 (7th Cir. 2018) (citing *Orellana-Arias v. Sessions*, 865 F.3d 476, 488–89 (7th Cir. 2017)).

*2 On appeal, May asserts several reasons why, as he sees it, his safety concerns were a contributing factor in his termination. These include: his whistleblowing intentions were widely known; legal counsel "entered into the equation" only after he voiced his concerns; and AGL investigated him when they found out he would be attending a safety conference, thereby supporting a finding of a close temporal relationship between a protected activity and his termination. May also alleges that his performance review was "bogus," his ethics investigation was a "sham," and everyone involved had decided in advance to fire him to gain bonuses and profits while disregarding public safety. Additionally, May lists, but without proper citation to the record, several pieces of allegedly critical evidence that he asserts the ALJ and ARB overlooked. In response, the Department of Labor points out that the ALJ and ARB considered these arguments in context of the record and disagreed with May's presentation of the case.

We cannot rule in May's favor. He fails to meaningfully engage with the decisions of the ALJ and ARB that he has asked us to review, both of which contained detailed and specific findings. Nearly all his arguments in support of his position that his protected activity was a contributing

factor in his termination lack citation to the law and the record. Further, many of his arguments and factual allegations are repetitive and conclusory. His poorly paginated briefing and appendices (see our note below that May is also a lawyer) do little to advance his conclusory arguments and allegations.

"[T]his court has repeatedly and consistently held that perfunctory and undeveloped arguments, as well as arguments that are unsupported by pertinent authority, are waived." *White v. United States*, 8 F.4th 547, 552 (7th Cir. 2021). Federal Rule of Appellate Procedure 28(a)(8)(A) requires appellants to file briefs containing "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies." Rule 28 applies equally to pro se litigants. *See Anderson v. Hardman*, 241 F.3d 544, 545 (7th Cir. 2001). And although we hold pro se litigants to a more flexible standard, May is a pro se litigant who is also lawyer. "[A] pro se lawyer is entitled to no special consideration." *Godlove v. Bamberger, Foreman, Oswald, & Hahn*, 903 F.2d 1145, 1148 (7th Cir. 1990).

Even if we were to overlook May's waiver, his claims would fail. This is because the ALJ had substantial evidence from which to conclude that May's protected activity was not a contributing factor in his termination; the ARB was right to affirm that decision. *Brousil v. U.S. Dep't of Lab., Admin. Rev. Bd.*, 43 F.4th 808, 812 (7th Cir. 2022). Additionally, as the ARB reasonably concluded, all of May's arguments before the ALJ were unsubstantiated or based on rebutted evidence. May does not advance any arguments on appeal to undermine this conclusion.

For these reasons, we DENY his petition for review.

All Citations

Not Reported in Fed. Rptr., 2025 WL 2306946

Footnotes

* We have agreed to decide the case without oral argument for reasons specified in Fed. R. App. P. 34(a)(2).

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.