



In the Matter of:

DARREN KOSSEN,

ARB CASE NO. 2021-0017

COMPLAINANT,

ALJ CASE NO. 2019-AIR-00022

v.

DATE: February 25, 2021

EMPIRE AIRLINES,

RESPONDENT.

ORDER DENYING INTERLOCUTORY APPEAL

Complainant Darren Kossen has filed a Notice of Appeal (Notice) seeking review of the Administrative Law Judge's (ALJ) February 3, 2021 Order Denying Motion to Recuse (Order) in this case arising under the employee protection provision of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.¹ We interpret the Notice as a petition for interlocutory review of the Order.

The Secretary of Labor and the Administrative Review Board (Board) have repeatedly held that interlocutory appeals are generally disfavored and that there is a strong policy against piecemeal appeals.² Although the Secretary has given the Board discretion to consider interlocutory appeals, such discretion may only be exercised in "exceptional circumstances."³

¹ 49 U.S.C. § 42121 (2000). AIR 21's implementing regulations are found at 29 C.F.R. Part 1979 (2018).

² See, e.g., *Kim v. SK Hynix Memory Sols.*, ARB No. 2020-0020, ALJ No. 2019-SOX-00012, slip op. at 3 (ARB Jan. 28, 2020).


³ Secretary's Order No. 01-2020, § 5(b)(69).

When a party seeks review of an ALJ's interlocutory order, the Board has elected to look to the interlocutory review procedure provided in 28 U.S.C. § 1292(b). The first step in this process is to have the ALJ certify the interlocutory issue for appellate review.⁴ But even if a party has failed to obtain interlocutory certification, the ARB may also consider interlocutory appeals under the "collateral order" exception.⁵ To fall within the "collateral order" exception, the order appealed must "conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment."⁶ The appeal must meet all of these criteria.

Kossen has failed to allege exceptional circumstances sufficient to merit interlocutory review in this case. He asserts that the ALJ is biased against him because the ALJ did not rule in his favor in a prior case and because the ALJ's son is employed by an airline.⁷ The ALJ considered these allegations and correctly concluded that neither was grounds for recusal.⁸ Accordingly, the request for interlocutory review is **DENIED**.

SO ORDERED.

FOR THE ADMINISTRATIVE REVIEW BOARD:



JAMES D. MCGINLEY
Chief Administrative Appeals Judge

⁴ *Powers v. Pinnacle Airlines, Inc.*, ARB No. 2005-0138, ALJ No. 2005-SOX-00065, slip op. at 5-6 (ARB Oct. 31, 2015); *Johnson v. U.S. Bancorp*, ARB No. 2011-0018, ALJ No. 2010-SOX-00037, slip op. at 4 n. 15 (ARB Mar. 14, 2011).

⁵ *See, e.g., Jordan v. Sprint Nextel Corp.*, ARB No. 2006-0105, ALJ No. 2006-SOX-00041, slip op. at 3, citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949).

⁶ *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978).

⁷ Complainant Darren Kossen's Motion for Recusal of Judge Larsen at 2-3.

⁸ *See* Order Denying Motion to Recuse at 1-3 and cases cited therein.