

U.S. Department of Labor

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



In the Matter of:

MARY ANN ELLIS,

ARB CASE NO. 2021-0005

COMPLAINANT,

ALJ CASE NO. 2019-FDA-00006

v.

DATE: September 9, 2021

GOODHEART SPECIALTY MEATS,

RESPONDENT.

Appearances:

For the Complainant:

Mary Ann Ellis; *pro se*; San Antonio, Texas

For the Respondent:

**Frank Davis, Esq.; *Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*;
Dallas, Texas**

**Before: James D. McGinley, *Chief Administrative Appeals Judge*, Thomas
H. Burrell and Stephen M. Godek, *Administrative Appeals Judges***

ORDER DENYING MOTION FOR RECONSIDERATION

PER CURIAM. Mary Ellis (Complainant) filed a complaint under the Food Safety Modernization Act (FSMA).¹ Complainant alleged that her former employer, Goodheart Specialty Meats (Respondent or Goodheart), violated the FSMA's

¹ 21 U.S.C. § 399d (2016), as implemented by federal regulations at 29 C.F.R. § 1987 (2021).

employee protection provisions by terminating her employment due to her complaints about Respondent's chicken product. On September 3, 2020, the Administrative Law Judge (ALJ) issued an Order Granting Respondent's Motion for Summary Decision. Subsequently, on September 17, 2020, the ALJ issued an Amended Order Granting Respondent's Motion for Summary Decision (Amended D. & O.).² On July 19, 2021, we affirmed the Amended D. & O. because Complainant failed to provide any grounds to upset the ALJ's Amended D. & O.

On July 27, 2021, Complainant filed a Motion for Reconsideration of the Administrative Review Board's Decision and Order. On August 4, 2021, Respondent filed a Response to Complainant's Motion for Reconsideration. For the following reasons, we deny Complainant's Motion for Reconsideration.

DISCUSSION

The Administrative Review Board (ARB or Board) is authorized to reconsider a decision upon receiving a motion for reconsideration within a reasonable time of the date of which the decision was issued.³ We will reconsider our decisions under limited circumstances, which include:

(i) material differences in fact or law from that presented to [the Board] of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the [Board's] decision, (iii) a change in the law after the [Board's] decision, and (iv) failure to consider material facts presented to the [Board] before its decision.⁴

Here, Complainant has failed to demonstrate a ground upon which the Board will grant reconsideration. Complainant has not presented any new evidence or a change in controlling law. Instead, Complainant reargues various points that Complainant previously raised on appeal before the Board. However, the Board has

² The D. & O. and Amended D. & O. are virtually the same, except the Amended D. & O. includes a Notice of Appeal Rights.

³ *Henin v. Soo Line R.R. Co.*, ARB No. 2019-0028, ALJ No. 2017-FRS-00011, slip op. at 3 (ARB Mar. 22, 2019) (citations omitted).

⁴ *Id.*

already carefully considered the evidentiary record as a whole and the parties' briefs on appeal.⁵

Complainant's arguments do not fall within any of the four limited circumstances under which we will reconsider our decisions. Accordingly, we **DENY** the Complainant's Motion for Reconsideration.⁶

SO ORDERED.

⁵ *Ellis v. Goodheart Specialty Meats*, ARB No. 2021-0005, ALJ No. 2019-FDA-00006, slip op. at 5 (ARB July 19, 2021).

⁶ Complainant may petition for review of the Board's Decision. *See* Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretarial review)), 85 Fed. Reg. 13186, 13188 at (6)(b)(1) (Mar. 6, 2020); 29 C.F.R. § 1987.112 (Judicial review).

CERTIFICATE OF SERVICE

ARB-2021-0005 Mary Ann Ellis v. GoodHeart Meats (Case No: 2019-FDA-00006)

I certify that the parties below were served this day.

09/09/2021

(DATE)



Thomas O. Shepherd, Jr., Esq.
Clerk of the Appellate Boards

GoodHeart Meats

--Electronic

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