



In the Matter of:

GREGORY CHAMBERS,

ARB CASE NO. 2019-0074

COMPLAINANT,

ALJ CASE NO. 2018-FRS-00086

v.

DATE: June 11, 2021

BNSF RAILWAY COMPANY,

RESPONDENT.

Appearances:

For the Complainant:

Joseph L. Bauer, Jr., Esq.; *The Bauer Law Firm, LLC*; Saint Louis, Missouri

For the Respondent:

Susan J. Travis, Esq.; *Robbins Travis PLLC*; Southlake, Texas; and Paul S. Balanon, Esq.; *BNSF Railway Company*; Fort Worth, Texas

Before: James D. McGinley, *Chief Administrative Appeals Judge*, James A. Haynes and Randel K. Johnson, *Administrative Appeals Judges*

ORDER DENYING MOTION FOR RECONSIDERATION

PER CURIAM. This case arises under the employee protection provisions of the Federal Railroad Safety Act of 1982 (FRSA).¹ Gregory Chambers (Complainant) filed a complaint alleging that BNSF Railway Company (Respondent or BNSF)

¹ 49 U.S.C. § 20109 (2008), as implemented by federal regulations at 29 C.F.R. Part 1982 (2020) and 29 C.F.R. Part 18, Subpart A (2020).

violated the FRSA by terminating his employment for reporting an injury. On July 23, 2019, an Administrative Law Judge (ALJ) issued a Decision & Order Dismissing Complaint based upon his findings that Complainant did not meet his burden for contributing factor causation and that Respondent proved its affirmative defense. On March 5, 2021, we affirmed the ALJ's decision because substantial evidence in the record supports the ALJ's finding as to the affirmative defense.

On April 27, 2021, Complainant filed a Motion for Reconsideration of the Board's Decision and Order. On May 6, 2021, BNSF filed a Response in Opposition 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 on which the decision was issued.² We will reconsider our decisions under limited circumstances, which include: (i) material differences in fact or law from those 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, or (iv) failure to consider material facts presented to the Board before its decision.³

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 argues the Board did not address every issue raised by Complainant, reemphasizing various points previously raised on appeal before the Board. However, the Board has already carefully considered

² *Henin v. Soo Line R.R. Co.*, ARB No. 2019-0028, ALJ No. 2017-FRS-00011, slip op. at 3 (ARB Mar. 22, 2019) (citing *Wimer-Gonzales v. J.C. Penney Corp., Inc.*, ARB No. 2010-0148, ALJ No. 2010-SOX-00045, slip op. at 2-3 (ARB Feb. 7, 2012)).

³ *Id.*

the evidentiary record as a whole and the parties' briefs on appeal, including the arguments Complainant highlights again in his Motion for Reconsideration.⁴

None of Complainant's arguments fall within any of the four limited circumstances under which we will reconsider our decisions. Accordingly, we **DENY** the Complainant's Motion for Reconsideration.⁵

SO ORDERED.

⁴ *Chambers v. BNSF Ry. Co.*, ARB No. 2019-0074, ALJ No. 2018-FRS-00086, slip op. at 3 (ARB Mar. 5, 2021).

⁵ 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. § 1982.112](#) (Judicial review).