U.S. Department of Labor

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

In the Matter of:

MICHAEL LAQUEY,

COMPLAINANT,

v.

UNITEDHEALTH GROUP, INC.,
d/b/a OPTUM,

RESPONDENT.

ARB CASE NO. 2017-0060

ALJ CASE NO. 2016-SOX-00002

DATE: January 12, 2021

Appearances:

For the Complainant:
Michael LaQuey; *pro se*; Crystal Bay, Minnesota

For the Respondent:
Sandra Jezierski, Esq.; Allyson Petersen Francis, Esq.; *Nilan Johnson Lewis, PA*; Minneapolis, Minnesota

Before: Thomas H. Burrell and Randel K. Johnson, *Administrative Appeals Judges*

ORDER DENYING RECONSIDERATION

PER CURIAM. The Complainant, Michael LaQuey, filed a complaint alleging that his employer, UnitedHealth Group, Inc. (Respondent), retaliated against him for engaging in activities protected by Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (Section 806 or SOX or Act), 18 U.S.C. § 1514A, as amended, and its implementing regulations at 29 C.F.R. Part 1980. On July 7, 2017, a Department of Labor

Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) dismissing Complainant's complaint. On October 9, 2020, we affirmed the ALJ's findings that Complainant failed to establish that he engaged in protected activity.

On November 8, 2020, Complainant filed his Petition for Reconsideration (Petition) seeking reconsideration of our decision. Respondent filed its Memorandum in Opposition to Complainant's Petition for Reconsideration (Opposition) on November 19, 2020. Complainant filed his Reply to Respondent's Objections (Reply) on November 28, 2020.

The Administrative Review Board (ARB or Board) is authorized to reconsider a decision upon the filing of a motion for reconsideration within a reasonable time of the date on which the decision was issued. We will reconsider our decisions under limited circumstances, which include: (i) material differences in fact or law from those presented to a court of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the court's decision, (iii) a change in the law after the court's decision, or (iv) failure to consider material facts presented to the court before its decision.[1]

Complainant asserts that we should reconsider our decision for several reasons, including: (1) ALJ Bell was biased and partial to Respondent's case;[2] (2) ALJ Bell did not consider evidence and additional discovery is needed to overturn his findings;[3] (3) the hearing was prejudicial to Complainant and ALJ Bell abused his discretion by asking Complainant questions;[4] (4) ALJ Bell tried the wrong case because a SOX complaint does not require mail or wire fraud or some monetary figure;[5] (5) ALJ Bell erred in dismissing the complaint because Complainant had an objectively reasonable belief that he engaged in protected activity;[6] (6) ALJ Bell erred in assessing Complainant's credibility without specific references to the

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[1] *Gupta v. Headstrong, Inc.*, ARB Nos. 2015-0032, -0033, ALJ No. 2014-LCA-00008, slip op. at 2 (ARB Feb. 14, 2017) (Order Denying Motion for Reconsideration) (citing *Kirk v. Rooney Trucking Inc.*, ARB No. 2014-0035, ALJ No. 2013-STA-00042, slip op. at 2 (ARB Mar. 24, 2016) (Decision and Order Denying Reconsideration)).

[2] Petition at 2-5, 8-9.

[3] *Id.* 5-6.

[4] *Id.* at 6.

[5] *Id.* at 6-8.

[6] *Id.* at 9-10.

evidence;[7] (7) ALJ Bell erred in making "substantive claims of fact without referencing the record;"[8] (8) there is new evidence from *Poehling v. UnitedHealth Group* that can establish causation;[9] and (9) there is evidence of a hostile work environment.[10] Most of these arguments have been already addressed by the Board[11] and do not fall within any of the four limited circumstances under which we will reconsider our decisions. Moreover, several arguments raised by Complainant simply state that the ALJ's findings were incorrect and provide no explanation why these findings were erroneous.[12]

However, Complainant's argument that there is new evidence from *Poehling v. UnitedHealth Group* does fall within a limited circumstance in which we will reconsider our decision. Even though it falls within a limited circumstance, Complainant asserts that the new evidence would "establish causation." In our decision, we did not address whether Complainant's alleged protected activity was a contributing factor to his adverse action because we affirmed the ALJ's finding that Complainant failed to establish that he engaged in protected activity. Accordingly, we do not need to reconsider our decision and **DENY** his Petition.

Respondent's Opposition moves for attorney's fees and costs and sanctions against Complainant because he continues to file frivolous motions presenting the same baseless facts and meritless legal theories that the OALJ and ARB have repeatedly rejected.[13] Complainant argues that "[t]here is no basis in law for Respondent to be awarded open-ended Attorney's Fees."[14] The Act permits the Board to award a successful litigant like Respondent a reasonable attorney fee not exceeding $1,000 where a SOX complaint is frivolous or brought in bad faith.[15] We

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[7] *Id.* at 11-12.

[8] *Id.* at 12-13.

[9] *Id.* at 13.

[10] *Id.*

[11] *LaQuey v. UnitedHealth Group, Inc.*, ARB No. 2017-0060, ALJ No. 2016-SOX-00002 (ARB Oct. 9, 2020).

[12] *See, e.g.*, Petition at 9-10 (claiming "[e]xhibit 246 pgs. 1 thru 7 do not support Failed Objectively Reasonable.").

[13] Opposition at 6.

[14] Reply at 7-8.

[15] 29 C.F.R. § 1980.110.

explained in *Reddy v. Medquist, Inc.*, that a complaint is frivolous "if it lacks an arguable basis in law or fact."[16] A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory while a complaint lacks an arguable basis in fact if the facts alleged are clearly baseless after providing a complainant the opportunity to present additional facts when necessary.[17]

Although nearly all arguments made by Complainant in his Petition lacked an arguable basis in law or fact and have been rejected by the Board, we find that Complainant's original complaint contained at least an arguable basis in law because it is based on his contention that Respondent retaliated because of SOX-protected activity. Therefore, we also **DENY** Respondent's request for attorney's fees and costs and sanctions against Complainant.

SO ORDERED.

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16 *Reddy v. Medquist, Inc.*, ARB No. 2004-0123, ALJ No. 2004-SOX-00035, slip op. at 9 (ARB Sept. 30, 2005) (quoting *Allison v. Delta Air Lines, Inc.*, ARB No. 2003-0150, ALJ No. 2003-AIR-00014, slip op. at 6 (ARB Sept. 30, 2004) (citing *Berry v. Brady*, 192 F. 3d 504, 507 (5th Cir. 1999)).

17 *Id.*