



In the Matter of:

ABDUL JALUDI,

ARB CASE NO. 2021-0053

COMPLAINANT,

ALJ CASE NO. 2021-SOX-00014

v.

DATE: August 25, 2021

CITIGROUP, INC.,

RESPONDENT.

Appearances:

For the Complainant:

Abdul Jaludi; *pro se*; Milford, Pennsylvania

For the Respondent:

Thomas A. Linthorst, Esq.; *Morgan Lewis & Bockius LLP*; Princeton, New Jersey; Christen L. Casale, Esq.; *Morgan Lewis & Bockius LLP*; Philadelphia, Pennsylvania

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

ORDER DISMISSING PETITION FOR REVIEW

PER CURIAM. This case arises under the whistleblower protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act (“SOX”), and its implementing regulations.¹ On October 27, 2015, Abdul Jaludi filed a complaint in the United States District Court

¹ 18 U.S.C. §1514A (2010); 29 C.F.R. Part 1980 (2020).

for the Middle District of Pennsylvania alleging that Citigroup, Inc., violated the SOX by discharging him from employment in 2013. On February 23, 2018, Jaludi filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging the same cause of action. The District Court dismissed Jaludi's District Court complaint on December 3, 2020, for untimeliness and failure to state a claim.² On February 23, 2021, OSHA dismissed the complaint "in deference to the District Court's ruling."³

Jaludi requested a hearing on the OSHA complaint before an Administrative Law Judge (ALJ). Prior to any hearing, Citigroup filed a Motion to Dismiss Jaludi's OSHA complaint because Jaludi's SOX claim was adjudicated by the District Court. On June 25, 2021, the ALJ issued an Order Granting Respondent's Motion to Dismiss (ALJ Order).

Under the regulations governing the filing of SOX petitions for review, a petition for review of an ALJ's decision must be filed with this Board within fourteen days of the date of the ALJ's decision.⁴ Jaludi electronically filed a Petition for Review on July 19, 2021, and it was therefore untimely. Because the filing period is not jurisdictional and is subject to modification, we issued an Order to Show Cause allowing Jaludi to explain why his petition should not be dismissed as untimely.

The Board may equitably toll the appeal deadline when the petitioner demonstrates that (1) he or she pursued their appellate rights diligently but (2) an extraordinary circumstance prevented them from filing their petition on time.⁵ Equitable tolling is granted sparingly and only upon a showing that the

² *Jaludi v. Citigroup*, No. 3:15-cv-02076, 2020 WL 7075245 (M.D. Pa. 2020). Jaludi appealed the District Court judgment to the United States Court of Appeals for the Third Circuit, and the appeal remains pending. *Jaludi v. Citigroup*, Case No. 21-01108 (3d Cir. Jan 21, 2021).

³ ALJ Order at 2.

⁴ 29 C.F.R. § 1980.110(a).

⁵ *Madison v. U.S. Dep't of Labor*, 924 F.3d 941, 946-47 (7th Cir. 2019).

extraordinary circumstances preventing a timely filing were out of the petitioner's control.⁶

The Board has recognized four principal, but not exclusive, circumstances in which equitable tolling may be granted: (1) when the defendant has actively misled the plaintiff regarding the cause of action; (2) when the plaintiff has in some extraordinary way been prevented from filing his or her action; (3) when the plaintiff has raised the precise statutory claim at issue but has done so in the wrong forum, and (4) where the employer's own acts or omissions have lulled the plaintiff into foregoing prompt attempts to vindicate his rights.⁷

Jaludi bears the burden of justifying the application of equitable tolling principles. He has not specifically addressed any of the four grounds that the ARB has recognized, but instead asserts that he “[l]ack[ed] funds to hire a lawyer” and could not find one “willing to take this on a contingency basis after they learn (sic) I had signed a severance agreement.”⁸ His inability to hire a representative does not toll the limitations period.

Jaludi also asserts that “[t]here was no mention of the Review Board or any option or timing of an appeal or review in the Judge Boucher's final order or memorandum.”⁹ But ALJs are not required by statute or regulation to include a Notice of Appeal Rights in their decisions, and failure to do so does not constitute grounds for tolling the limitations period.¹⁰

⁶ *Sidney Hillman Health Ctr. of Rochester v. Abbott Labs., Inc.*, 782 F.3d 922, 930 (7th Cir. 2015) (quoting *Simms v. Acevedo*, 595 F.3d 774, 781 (7th Cir. 2010)).

⁷ *Swinney v. Fluor Corp.*, ARB No. 2015-0044, ALJ No. 2014-SOX-00041, slip op. at 3 (ARB June 11, 2015).

⁸ Complainant's Response to Show Cause for Review at 1.

⁹ *Id.*

¹⁰ *See, e.g., Swinney*, ARB No. 2015-0044, slip op. at 3 (“The fact that the ALJ did not include a notice of appeal rights is regrettable, but the ALJs are not required by statute or regulation to do so.”).

Accordingly, we hold that Jaludi has demonstrated neither extraordinary circumstances nor any other grounds compelling us to equitably toll the fourteen-day appeal period. We therefore **DENY** Jaludi's Petition for Review and **DISMISS** his appeal.

SO ORDERED.