

**U.S. Department of Labor**

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



**In the Matter of:**

**BALDONICK FERNANDEZ,**  
**COMPLAINANT,**

**ARB CASE NO. 2022-0033**

**ALJ CASE NO. 2022-LCA-00005**

**v.**

**DATE: July 5, 2022**

**SAP AMERICA, INC.,**

**RESPONDENT.**

**Appearances:**

***For the Complainant:***

**Baldonick Fernandez; *pro se*; Pompano Beach, Florida**

***For the Respondent:***

**K. Edward Raleigh, Esq.; *Fragomen, Del Rey, Bernsen & Loewy, LLP*;  
Washington, District of Columbia**

**Before: Thomas H. Burrell and Tammy L. Pust, *Administrative Appeal*  
*Judges***

## **ORDER DENYING RECONSIDERATION**

PER CURIAM. This case arises under the H-1B provisions of the Immigration Nationality Act (INA or Act), as amended, and its implementing regulations.<sup>1</sup> On March 16, 2022, an Administrative Law Judge (ALJ) issued a Decision and Order of Dismissal (D. & O.) because Baldonick Fernandez (Complainant) “did not establish good cause for his failure to appear and pursue his request for hearing.”<sup>2</sup>

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<sup>1</sup> 8 U.S.C. § 1101(a)(15)(H)(i)(b) and 8 U.S.C. § 1182(n). The statute’s implementing regulations are found at 20 C.F.R. Part 655, subparts H and I (2020).

<sup>2</sup> *Fernandez v. SAP America, Inc.*, ALJ No. 2022-LCA-00005, slip op. at 3 (ALJ Mar. 16, 2022) (D. & O.).

Complainant appealed the D. & O. to the Administrative Review Board (ARB or Board). On June 10, 2022, the Board issued an Order of Dismissal because Complainant did not file an opening brief or respond to the Order to Show Cause.<sup>3</sup> On June 13, 2022, Complainant filed a letter with the Board, which we construe as a request for reconsideration of the Order of Dismissal. Respondent filed its opposition to Complainant's request on June 15, 2022.

The Board has previously identified four non-exclusive grounds for reconsidering a decision and order, which include whether the movant has demonstrated: (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.<sup>4</sup>

Complainant has failed to demonstrate a ground upon which the Board will grant reconsideration. Complainant reiterates arguments contained in his Petition for Review while also claiming that he is "not sure why [his] latest appeal was denied" and that "[t]he judge did NOT give [him] the DUE process that [he is] entitled [sic throughout]."<sup>5</sup> However, Complainant fails to address why he did not file an opening brief or respond to the Order to Show Cause. Complainant had registered as an e-Filer, which allows Complainant to electronically access case filings in any location. The Board electronically served Complainant with the Briefing Schedule on April 6, 2022, and the Order to Show Cause on May 13, 2022. Subsequently, on June 13, 2022, Complainant filed his request for reconsideration, utilizing the same electronic filing system that the Board used to serve Complainant with the Briefing Schedule and Order of Dismissal.

None of Complainant's arguments fall within any of the four limited circumstances under which the Board will reconsider its decisions. Therefore, the request for reconsideration is **DENIED**.<sup>6</sup>

### **SO ORDERED.**

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<sup>3</sup> *Fernandez v. SAP America, Inc.*, ARB No. 2022-0033, ALJ No. 2022-LCA-00005, slip op. at 1 (ARB June 10, 2022) (per curiam) (Order of Dismissal).

<sup>4</sup> *Govindarajan v. N2 Services, Inc.*, ARB No. 2020-0032, ALJ No. 2020-LCA-00001, slip op. at 2 (ARB May 25, 2021) (per curiam) (Order Denying Motion for Reconsideration) (citing *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)).

<sup>5</sup> Comp. Request for Reconsideration at 1.

<sup>6</sup> In any appeal of this Decision and Order that may be filed, we note that the appropriately named party is the Secretary, Department of Labor (not the Administrative Review Board).