

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
Newport News, Virginia

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**Issue Date: 15 December 2023**

CASE NO.: 2023-CAR-00002

*In the Matter of:*

CHRISTOPHER ANDRESKI,  
*Complainant,*

v.

UNITED STATES MARSHALS SERVICE,  
*Respondent.*

**ORDER DISMISSING COMPLAINT**

This matter arises under the employee-protection provisions of the Criminal Antitrust Anti-Retaliation Act (“CAARA”), 15 U.S.C. § 7a-3. That statute makes it unlawful for an employer to discriminate against an employee in the terms and conditions of employment when the employee has provided information regarding certain violations of the criminal anti-trust laws. The case was assigned to me on October 4, 2023, and on October 5, 2023, I issued an order to Complainant Christopher Andreski to show cause why his complaint should not be dismissed because (1) his complaint was untimely, or (2) Respondent is not an “employer” under CAARA.

On October 24, 2023, Mr. Andreski filed a request for an extension of time to respond to the Order to Show Cause (OSC). He did not serve his request on Respondent, and on October 24, 2023 I attached a copy of his request to an order directed to Respondent, requesting that Respondent advise whether it had an objection to the extension request. I also advised Complainant to serve all documents filed with this Office on counsel for Respondent at the time he files them. Respondent stated that it had no objection to the requested extension, and by order dated November 8, 2023, I allowed Complainant until December 8, 2023 to respond to the October 4 OSC.

By email dated December 9, 2023, one day after the due date for responding to the OSC, Complainant requested, by email, an additional extension. He again did not serve a copy on Respondent. The request is set forth verbatim below:

Dear Chief Administrative Law Judge Johnson,

I am respectfully requesting an extension in Christopher Andreski OALJ Case No.: 2023-CAR-00002. This extension request is due to an unknown party that illegally (Per FECA Manual) deleting Christopher Andreski Neck (FECA/OWCP Case# 550458476) Traumatic injury claim from the US Department of Labor ECOMP system. Additional, Christopher Andreski is addressing the constant and ongoing medical interference.

Lastly, I have included my counsel Attorney Scott Graham who represents me in my (2022) MSPB appeal case, which is pending status before the MSPB Appeals Board.

Thank you for your time in this matter.

Respectfully,  
Christopher Andreski  
(Telephone number omitted)

Request for Extension of Time

Complainant's request for an extension of time will be denied.

First, the original due date for him to respond to the OSC was October 26, 2023, 21 days after the date of the OSC. At his request, that due date was extended for another 43 days, giving him a total of 64 days to respond. That is ample time.

Second, Mr. Andreski's current request for an extension of time was itself untimely. His response to the OSC was due on December 8, 2023, and his request for an extension was filed by email on December 9, 2023.

Third, Mr. Andreski's request does not contain sufficient reasons either to excuse its untimely filing or for an additional extension of time. He has alleged that his claim for workers' compensation under the Federal Employees Compensation Act has been deleted from the Department's ECOMP system. That claim is unrelated to the current one, and should be addressed under FECA rather than under CAARA. Complainant has additionally alleged that he is "addressing the constant and ongoing medical interference." That allegation is vague, and it is not clear how medical interference relates to this claim of employment discrimination. Furthermore, Mr. Andreski has not stated, let alone shown, how his addressing medical interference has made him unable to respond to the OSC.

## Dismissal

The documents filed to date show that Complainant was separated from employment with Respondent U.S. Marshals Service in May of 2022. He filed his complaint of discrimination with OSHA on or about May 16, 2023, about a year after his separation. Under 29 C.F.R. § 1991.103(d), a complaint must be filed no later than 180 days after the alleged violation of CAARA. His complaint was therefore untimely.

Timeliness of a complaint is not a jurisdictional matter, and the filing period can be extended on the basis of equitable tolling. Equitable tolling may be available (1) when the movant has raised the precise statutory claim in issue but has done so in the wrong forum; (2) when the movant has in some extraordinary way been prevented from filing; and (3) when the movant has some excusable ignorance of the respondent's discriminatory act. See *Martin v Paragon Foods*, ARB No. 2022-0058, ALJ No. 2021-FDA-001, slip op. at p. 9 (ARB June 8, 2023). The burden is on Complainant to justify the application of equitable tolling. *Ibid.*; *Carbon v. Shire Pharms.*, ARB No. 2018-0064, ALJ No. 2018-SOX-00009, slip op. at 3 (ARB May 5, 2020). Here, Complainant has not addressed or made out a case for equitable tolling of the filing deadline based on any of the grounds for doing so. Accordingly, the complaint will be dismissed.

## ORDER

Based on the foregoing, IT IS ORDERED:

1. Complainant's request for an extension of time to respond to the October 5, 2023 Order to Show Cause is DENIED; and
2. The complaint is DISMISSED as untimely filed.

**SO ORDERED.**

PAUL C. JOHNSON, JR.  
Administrative Law Judge

PCJ/pmp  
Newport News, Virginia

## NOTICE OF APPEAL RIGHTS

To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within thirty (30) days of the date of the administrative law judge's decision. 29 C.F.R. § 1991.110(a).

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. See 29 C.F.R. § 1991.110(a). Your Petition must specifically identify the findings, conclusions, or orders to which you object. You waive any objections you do not raise specifically. See 29 C.F.R. § 1991.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. See 29 C.F.R. § 1991.110(a).

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1991.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. See 29 C.F.R. §§ 1991.109(e) and 1991.110(a) and (b).

### Filing and Service of an appeal

1. **Use of EFS System:** The Board's Electronic Filing and Service (EFS) system allows parties to initiate appeals electronically, file briefs and motions electronically, receive electronic service of Board issuances and documents filed by other parties, and check the status of appeals via an Internet-accessible interface. Use of the EFS system is free of charge to all users. To file an appeal using the EFS System go to <https://efile.dol.gov>. All filers are required to comply with the Board's rules of practice and procedure found in 29 C.F.R. Part 26, which can be accessed at <https://www.ecfr.gov/current/title-29/subtitle-A/part-26>.

- A. **Attorneys and Lay Representatives:** Use of the EFS system is **mandatory for all attorneys and lay representatives** for all filings and all service related to

cases filed with the Board, absent an exemption granted in advance for good cause shown. 29 C.F.R Part § 26.3(a)(1), (2).

**B. Self-Represented Parties: Use of the EFS system is strongly encouraged for all self-represented parties** with respect to all filings with the Board and service upon all other parties. Using the EFS system provides the benefit of built-in service on all other parties to the case. Without the use of EFS, a party is required to not only file its documents with the Board but also to serve copies of all filings on every other party. Using the EFS system saves litigants the time and expense of the required service step in the process, as the system completes all required service automatically. Upon a party's proper use of the EFS system, no duplicate paper or fax filings are required.

**Self-represented parties who choose not to use the EFS system must file by mail or by personal or commercial delivery** all pleadings, including briefs, appendices, motions, and other supporting documentation, directed to:

Administrative Review Board  
Clerk of the Appellate Boards  
U.S. Department of Labor  
200 Constitution Avenue, N.W., Room S-5220,  
Washington, D.C., 20210

## **2. EFS Registration and Duty to Designate E-mail Address for Service**

To use the Board's EFS system, a party must have a validated user account. To create a validated EFS user account, a party must register and designate a valid e-mail address by going to <https://efile.dol.gov>, select the button to "Create Account," and proceed through the registration process. If the party already has an account, they may simply use the option to "Sign In."

Once a valid EFS account and profile has been created, the party may file a petition for review through the EFS system by selecting "eFile & eService with the Administrative Review Board" from the main dashboard, and selecting the button "File a New Appeal - ARB." In order for any other party (other than the EFS user who filed the appeal) to access the appeal, the party must submit an access request. To submit an access request, parties must log into the EFS System, select "eFile & eService with the Administrative Review Board," select the button "Request Access to Appeals," search for and select the appeal the party is requesting access to, answer the questions as prompted, and click the button "Submit to DOL."

Additional information regarding registration for access to and use of the EFS system, including for parties responding to a filed appeal, as well as step-by-step User Guides, answers to frequently asked questions (FAQs), video tutorials and contact information for login.gov and EFS support can be found under the “Support” tab at <https://efile.dol.gov>.

### 3. Effective Time of Filings

Any electronic filing transmitted to the Board through the EFS e-File system or via an authorized designated e-Mail address by 11:59:59 Eastern Time shall be deemed to be filed on the date of transmission.

### 4. Service of Filings

#### A. Service by Parties

- **Service on Registered EFS Users:** Service upon registered EFS users is accomplished automatically by the EFS system.
- **Service on Other Parties or Participants:** Service upon a party that is not a registered EFS user must be accomplished through any other method of service authorized under applicable rule or law.

#### B. Service by the Board

Registered e-filers will be e-served with Board-issued documents via EFS; they will not be served by regular mail (unless otherwise required by law). If a party unrepresented by counsel files their appeal by regular mail, that party will be served with Board-issued documents by regular mail. Any party may opt into e-service at any time by registering for an EFS account as directed above, even if they initially filed their appeal by regular mail or delivery.

### 5. Proof of Service

Every party is required to prepare and file a certificate of service with all filings. The certificate of service must identify what was served, upon whom, and manner of service. Although electronic filing of any document through the EFS system will constitute service of that document on all EFS-registered parties, electronic filing of a certificate of service through the EFS system is still required. **Non EFS-registered parties must be served using other means authorized by law or rule.**

## 6. Inquiries and Correspondence

After an appeal is filed, all inquiries and correspondence related to filings should be directed to the Office of the Clerk of the Appellate Boards by telephone at 202-693-6300 or by fax at 202-513-6832. Other inquiries or questions may be directed to the Board at (202) 693-6200 or [ARB-Correspondence@dol.gov](mailto:ARB-Correspondence@dol.gov).