U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

ANTHONY L. WILLIAMS, **ARB CASE NO. 08-063**

COMPLAINANT, **ALJ CASE NO. 2008-AIR-003**

v. **DATE: June 23, 2010**

UNITED AIRLINES, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:
Anthony L. Williams, ***pro se*****, Oakland, California**

For the Respondent:
Michael Mankes, Esq., ***Littler Mendelson, P.C.*****, Boston, Massachusetts**

Before: Paul M. Igasaki, ***Chief Administrative Appeals Judge*****, E. Cooper Brown,** ***Deputy Chief Administrative Appeals Judge*****, and Wayne C. Beyer,** ***Administrative Appeals Judge***

ORDER DENYING RECONSIDERATION

Anthony Williams filed a complaint alleging that United Airlines fired him because he engaged in activity protected under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21).[1],

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1 49 U.S.C.A. § 42121 (Thomson/West Supp. 2006).

A United States Department of Labor Administrative Law Judge (ALJ) recommended dismissal of the complaint because Williams filed his claim more than 90 days after the filing deadline for AIR 21 claims.[2] On September 21, 2009, the Administrative Review Board (ARB or Board) issued a Final Decision and Order (F. D. & O.) affirming the ALJ because Williams failed to prove that he filed a timely claim or that he was entitled to equitable tolling of the deadline.[3]

On January 29, 2010, roughly four months after the F. D. & O., Williams filed a Motion for Reconsideration of the F. D. & O.[4] Williams argues that the Board erred in affirming the ALJ's holding that the automatic stay provisions of United's bankruptcy petition did not affect the timeliness of Williams's claim.

The ARB 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.[5] As an initial matter, we note that Williams filed his Motion several months after the Board issued its F. D. & O. Given the Board's rulings in other cases, we feel that Williams's request for reconsideration, filed four months after the F. D. & O., is untimely.[6] But even if it had been timely, upon consideration of the Motion's merits, we would nevertheless deny reconsideration.

Moving for reconsideration of a final administrative decision is analogous to petitioning for panel rehearing under Rule 40 of the Federal Rules of Appellate Procedure. Rule 40 expressly requires that any petition for rehearing "state with particularity each point of law or fact that the petitioner believes the court has overlooked

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2 49 U.S.C.A. § 42121(b)(1).

3 *Williams v. United Airlines*, ARB No. 08-063, ALJ No. 2008-AIR-003 (ARB Sept. 21, 2009), *appeal docketed sub nom. Williams v. U.S. Dep't of Labor*, No. 10-71595 (9th Cir. June 4, 2010).

4 Williams also filed an appeal with the United States Court of Appeals for the Federal Circuit, which denied jurisdiction and transferred the case to the Ninth Circuit Court of Appeals. *Williams v. U.S. Dep't of Labor*, No. 2010-3029, 2010 WL 1140888 (Fed. Cir. Mar. 23, 2010). The Ninth Circuit stayed Williams's appeal pending the resolution of this Motion for Reconsideration. *Williams v. U.S. Dep't of Labor*, No. 10-71595 (9th Cir. June 4, 2010) (order docketing appeal and staying proceedings).

5 *Henrich v. Ecolab, Inc.*, ARB No. 05-030, ALJ No. 2004-SOX-051, slip op. at 11 (ARB May 30, 2007).

6 *See, e.g., Powers v. Paper, Allied-Industrial Chemical & Energy Workers Int'l Union (PACE)*, ARB No. 04-111, ALJ No. 2004-AIR-019, slip op. at 4 (ARB Dec. 21, 2007), citing *Henrich*, slip op. at 17.

or misapprehended . . . ."[7] In considering a motion for reconsideration, the Board has applied a four-part test to determine whether the movant has demonstrated:

> (i) material differences in fact or law from that 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, and (iv) failure to consider material facts presented to the court before its decision.[8]

Williams's Motion alleges that the Board improperly affirmed the ALJ's holding that his September 2007 AIR 21 claim, filed in response to his May 8, 2003 termination, was untimely because it was filed beyond AIR 21's 90-day filing period.[9] Specifically, Williams claims that the ALJ and the Board erred in finding that United's bankruptcy filing in 2002 did not affect the timeliness of his complaint. In support, Williams cites to an order of the Northern District of Illinois Bankruptcy Court, *In Re UAL Corporation*, No. 02-B-48191 (Bankr. N.D. Ill. Dec. 11, 2002), Motion, Exh. C, at 2 (c)-(d) ordering that the Debtors' petition acts as a stay of "any act to obtain possession of property of the Debtors' estates or of property from their estates or to exercise control over property of the estates" and "any act to create, perfect, or enforce any lien against property of the Debtors' estates." Williams argues that under the decision, his 2007 SOX claim is timely because it involves an "act to create, perfect, or enforce any lien against the property of the Debtors' estates." Motion at 4-5. However, Williams misstates the Order of the Bankruptcy Court. The section cited lists transactions that filing a petition would stay. In the same Order, the Bankruptcy Court explained that the stay affects "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the Debtors that was or could have been commenced **before** . . . the Petition Date." (emphasis added). United's bankruptcy petition was filed in 2002. United terminated Williams in May of 2003 and he filed his SOX claim in September of 2007. Therefore, as we concluded in the F. D. & O., the ALJ correctly found that United's bankruptcy did not affect his obligation to timely file his claim, and the *UAL Corporation* order to which Williams cites in his Motion for Reconsideration does not change that conclusion.

In presenting the allegations contained in his Motion, Williams has not demonstrated that any of the provisions of the Board's four-part test apply. He does not

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7 Fed. R. App. P. 40(a)(2).

8 *Getman v. Southwest Secs., Inc.*, ARB No. 04-059, ALJ No. 2003-SOX-008, slip op. at 1-2 (ARB Mar. 7, 2006).

9 Motion at 4-5.

argue that there were material differences in the law or fact from that presented to the ARB of which he could not have been aware through reasonable diligence. He does not assert that there has been a change in the law or that new facts have arisen since we issued our F. D. & O. And he does not indicate that we did not consider material facts prior to issuing our ruling. Accordingly, we **DENY** Williams's Motion for Reconsideration.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge