



In the Matter of:

GREGORY KELLY,

ARB CASE NO. 15-006

COMPLAINANT,

ALJ CASE NO. 2014-AIR-018

v.

DATE: December 5, 2014

**ALABAMA PUBLIC SERVICE
COMMISSION,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER OF CASE CLOSING

On October 29, 2014, the Administrative Review Board received multiple copies of “Complaint’s Response to Order to Dismiss” filed by Complainant Gregory Kelly. Kelly states that this document is a reply to the Respondent’s Order to Dismiss Order dated on or about October 16, 2014. On October 16, 2014, a Department of Labor Administrative Law Judge filed an Order of Dismissal in this case finding that Kelly’s complaint, whether filed under the whistleblower provisions of the environmental statutes¹ or the NTSSA, were untimely since Respondent terminated his employment on

¹ Although Complainant filed his complaint under twenty-one different statutes, the ALJ determined that the only statutes that he could maintain a complaint against a public entity and under which he had jurisdiction to consider a complaint, were the Safe Drinking Water Act, 42 U.S.C.A. § 300j-9(i) (Thomson/West 2003); the Federal Water Pollution Control Act, 33 U.S.C.A. § 1367 (West 2001); the Solid Waste Disposal Act, 42 U.S.C.A. § 6971 (Thomson/West 2003); the Clean Air Act, 42 U.S.C.A. § 7622 (Thomson/West 2003); the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. § 9610 (Thomson/West 2005) (collectively, the environmental statutes) and the National Transit Systems Security Act, 6 U.S.C.A. § 1142 (Thomson/West Supp. 2014) (NTSSA).

or around April 9, 2009, and he did not file his complaint with the Occupational Safety and Health Administration until April 24, 2014.² The ALJ further determined that Kelly failed to allege any facts that would entitle him to toll the limitations period.

The ARB has authority to hear an appeal from a final decision of a Department of Labor ALJ under the environmental statutes³ and the NTSSA.⁴ To obtain such review the appealing party must file a petition for review with the Board within ten business days of the date on which the ALJ issued the decision for cases arising under both the environmental statutes⁵ and the NTSSA.⁶ The petitions for review should identify the legal conclusions in the ALJ's decision with which they object or the ARB may consider the objections to be waived.⁷

It was unclear why Kelly sent the Board the Complaint's Response to Order to Dismiss. If Kelly intended his filing as a Petition for Review of the ALJ's Order of Dismissal, it is deficient as it does not address any error in the basis for that dismissal, i.e., the untimeliness of the complaint and failure to establish entitlement to equitable tolling. However, given that Kelly is pro se, we gave him the benefit of the doubt. Accordingly, the Board issued an order on November 4, 2014, stating that if it was Kelly's intention to file a Petition for Review with the ARB, he had ten business days from the date of the Board's order to file a petition for review that complies with 29 C.F.R. § 24.110(a) and 29 C.F.R. § 1982.110(a). The Board cautioned that if Kelly failed to timely file a conforming petition for review, this case would be closed.

² The ALJ noted that the latest Kelly's complaint could be filed under the environmental statutes was on or before May 9, 2009, and under the NTSSA, on or before October 6, 2009.

³ Secretary's Order 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); 29 C.F.R. § 24.110.

⁴ Secretary's Order 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); 29 C.F.R. § 1982.110(a).

⁵ 29 C.F.R. § 24.110(a).

⁶ 29 C.F.R. § 1982.110(a).

⁷ 29 C.F.R. § 24.110(a); 29 C.F.R. § 1982.110(a).

Kelly has not filed a proper Petition for Review with the Board as ordered. Accordingly, this case is **CLOSED**.

FOR THE ADMINISTRATIVE REVIEW BOARD:

Janet R. Dunlop
General Counsel

Note: Questions regarding this Order should be directed to the Board's Paralegal Specialists: Telephone: (202) 693-6200; Facsimile: (202) 693-6220.