In the Matter of:

MOSHE FRIEDMAN, **ARB CASE NO. 12-089**

COMPLAINANT, **ALJ CASE NO. 2012-ERA-008**

v. **DATE: January 22, 2014**

COLUMBIA UNIVERSITY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

***For the Complainant*:**
Moshe Friedman, *pro se*, South Fallsburg, New York

***For the Respondents*:**
Evandro C. Gigante, Esq.; *Proskauer Rose LLP*, New York, New York

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*; E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*; and Luis A. Corchado, *Administrative Appeals Judge*

ORDER DENYING RECONSIDERATION

Moshe Friedman filed the above-captioned complaint alleging that Columbia University terminated his employment in violation of the whistleblower protection provisions of the Energy Reorganization Act of 1974, as amended (ERA).[1] After an evidentiary hearing on Columbia University's motion for summary decision, an Administrative Law Judge (ALJ) found that the undisputed material facts established that Friedman's complaint was untimely filed under the ERA and dismissed the complaint. On appeal to the Administrative Review Board (ARB), the

[1] 42 U.S.C.A. § 5851 (Thomson Reuters 2012).

Board affirmed the ALJ's decision denying Friedman's complaint because he failed to timely file it.[2]

Friedman has filed a motion requesting the Board to reconsider its ruling and grant Friedman's request for relief. We have previously identified four non-exclusive grounds for reconsidering a decision. The ARB generally applies a four-part test to determine whether the movant has demonstrated:

> (i) material differences in fact or law from that 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, and (iv) failure to consider material facts presented to the Board before its decision.[3]

Friedman merely repeats two arguments in his motion that he raised before the Board in his original appeal, which we already considered in our prior decision. First, Friedman again argues that the ALJ should have determined that another ERA whistleblower complaint that a fellow Columbia employee timely filed was also, as Friedman alleges, filed on behalf of Friedman as a party-complainant. But we noted that the complaint his fellow employee filed "is a separate matter . . . not before us."[4] Thus, because only the above-captioned complaint Friedman filed is before us, we declined to address in this case Friedman's assertion regarding any other alleged complaint he may have filed.[5]

Similarly, Friedman again argues that the ALJ erred in not determining that he timely filed a more recent ERA whistleblower complaint with the Occupational Safety and Health Administration (OSHA) on June 21, 2011, alleging that in violation of the terms of the separation agreement he signed with Columbia, it failed to return his personal computer data stored on his Columbia work computer in retaliation for Friedman filing the above-captioned complaint. Again, because only the above-captioned complaint Friedman filed is before us, we declined to address in this case Friedman's assertion regarding any other alleged complaint he may have filed.[6]

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2 *Friedman v. Columbia Univ.*, ARB No. 12-089, ALJ No. 2012-ERA-008 (ARB Nov. 25, 2013).

3 *OFCCP v. Florida Hospital of Orlando*, ARB No.11-011, ALJ No.2009-OFC-002, slip op. at 5 (ARB July 22, 2013) (Order Granting Motion for Reconsideration).

4 *Friedman*, ARB No. 12-089, slip op. at 3, n.13.

5 *Id.* at 6.

6 *Id*.

Thus, as Friedman only reiterates arguments in his motion for reconsideration that the Board already considered in our original decision, we will not address them again on reconsideration. Consequently, after reviewing Friedman's motion for reconsideration, we find an insufficient basis for further briefing and hereby deny such motion.[7]

Accordingly, Friedman's motion for reconsideration is **DENIED**.

SO ORDERED.

LUIS A. CORCHADO
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

[7] Although the Board has received a request from Columbia for an extension of time to file a response to Friedman's motion for reconsideration, in light of our order denying reconsideration, such a request is moot.