



**In the Matter of:**

**ANTHONY FLEMING,**

**ARB CASE NO. 14-070**

**COMPLAINANT,**

**ALJ CASE NO. 2013-ERA-014**

**v.**

**DATE: August 19, 2015**

**THE SHAW GROUP and  
JAMIE MORRIS,<sup>1</sup>**

**RESPONDENTS.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Anthony Fleming, *pro se*, Augusta, Georgia**

***For the Respondent:***

**Rebecca Carr Rizzo, *Esq.*; Daryl Shapiro, *Esq.*; Pillsbury Winthrop Shaw Pittman, LLP, Washington, District of Columbia**

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*, and Luis A. Corchado, *Administrative Appeals Judge***

### **FINAL DECISION AND ORDER**

This case arises under the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C.A. § 5851 (Thomson Reuters 2012), as implemented by regulations codified at 29 C.F.R. Part 24 (2014). The Shaw Group employed Anthony Fleming as an electrician on the night shift from November 11, 2011, through June 8, 2012, when it laid him off through a reduction in force. Prior to being laid off, Fleming sought or was interested in a night-shift foreman position

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<sup>1</sup> The ALJ dismissed Jamie Morris from the complaint as he was not an employer. Order Dismissing Individual as Named Respondent and Order Denying Complaint at 3-4. Fleming does not appeal the ALJ's determination as to Morris's status.

but was denied on multiple occasions. Fleming claims that Shaw and Shaw supervisor, Jamie Morris, retaliated against him for filing a whistleblower complaint against a former employer. At the hearing, Fleming, pro se, did not testify and did not put forth any evidence to show that his RIF or denial of the foreman position was in retaliation for his complaint against a former employer. The ALJ granted a directed verdict for the employer Shaw Group.

Fleming filed a one-paragraph petition for review with the Administrative Review Board followed by a one page brief.<sup>2</sup> In his pleadings, Fleming does not identify specific assignments of error followed by legal arguments supported by authority. At best, Fleming's brief contains conclusory assertions of ultimate fact contrary to the ALJ's findings. Fleming's pro se status does not absolve him of the obligation to identify issues for this Board to review on appeal and to substantiate those issues with supported legal argument.<sup>3</sup> Fleming's pleadings fail to state a sufficient basis for reversal even when viewed with the latitude warranted by his pro se status. Consequently, we affirm the ALJ's determination.

Accordingly, Fleming's petition for review is **DISMISSED**.

**SO ORDERED.**

**JOANNE ROYCE**  
**Administrative Appeals Judge**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**LUIS A. CORCHADO**  
**Administrative Appeals Judge**

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<sup>2</sup> The Administrative Review Board has authority to hear ERA whistleblower appeals. Secretary's Order No. 2-2012 (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.

<sup>3</sup> *Dev. Res., Inc.*, ARB No. 02-046, slip op. at 4 (ARB Apr. 11, 2002) (citing *Tolbert v. Queens Coll.*, 242 F.3d 58, 75-76 (2d Cir. 2001) ("settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived"); *United States v. Hayter Oil Co.*, 51 F.3d 1265, 1269 (6th Cir. 1995) ("It is not our function to craft an appellant's arguments."); *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir.1991) ("A skeletal 'argument,' really nothing more than an assertion, does not preserve a claim [for appellate review] . . . . Judges are not like pigs, hunting for truffles buried in briefs."); *Van Allen v. Cuomo*, 621 F.3d 244 n.2 (2d Cir. 2010)).