



In the Matter of:

GREGORY KELLY,

ARB CASE NO. 2020-0009

COMPLAINANT,

ALJ CASE NO. 2019-ERA-00013

v.

DATE: OCT 23 2019

**STATE OF ALABAMA PUBLIC
SERVICE COMMISSION *et al,***

RESPONDENT.

Appearances:

For the Complainant:

Gregory Kelly, *pro se*, Montgomery, Alabama

For the Respondent: No Appearance

**BEFORE: William T. Barto, *Chief Administrative Appeals Judge* and
Heather C. Leslie, *Administrative Appeals Judge***

FINAL DECISION AND ORDER DENYING PETITION FOR REVIEW

As noted by the Administrative Law Judge (ALJ) below, in 2018 and 2019 Gregory Kelly (“Kelly” or “Complainant”) filed multiple complaints with the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”) under various whistleblower statutes, including, but not limited to, the Energy Reorganization Act (“ERA”), 42 U.S.C. § 5851, the Sarbanes-Oxley Act (“SOX”), 18 U.S.C. § 5851 and Section 11(c) of the Occupational Safety and Health (“OSH”) Act. In a letter dated May 13, 2019, OSHA notified Complainant that it was dismissing his complaints because they were untimely and failed to establish reasonable cause to believe that whistleblower retaliation had occurred. On April 30, 2019, Complainant filed a request for hearing with the Office of Administrative Law Judges (“OALJ” or “Office”) challenging OSHA’s determination.

On September 25, 2019, the ALJ, *sua sponte*, dismissed the complaints before him. The ALJ concluded the complaints were untimely and Complainant failed to allege any facts to justify the application of equitable tolling principles. Further, the ALJ concluded that he lacked jurisdiction to adjudicate any claims arising under the OSH Act, relying on 29 U.S. C. § 660(c)(2) as well as *Gummala v. Carnival Cruise Lines, Inc.*, ARB No. 15-088, ALJ No. 2015-SPA-1, slip op. at 2, n.3 (September 26, 2017). For these reasons, the ALJ dismissed the complaint before him.

Complainant timely filed a petition for review with the Administrative Review Board (ARB or Board). “The Board may decline review of any case whenever in its judgment review would be inappropriate because of lack of timeliness, the nature of the relief sought, the case involves only settled issues of law, the appeal is frivolous on its face, or other reasons.” 29 C.F.R. § 8.9(a)(2018); Secretary’s Order No. 01-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13,072 (Apr. 3, 2019)(directing use of rules of practice at 29 C.F.R. Part 8 for, *inter alia*, whistleblower appeals).

Upon review of the matters submitted by Complainant in connection with his petition, we are unable to identify any explanation as to the untimeliness of his putative whistleblower complaints, as found by the ALJ below, nor is there any argument advanced by Complainant as to why the Department of Labor might have jurisdiction over the various other claims raised in his pleadings, including the OSH Act. We have considered the fact that Complainant is self-represented, but we also note that he is an experienced litigant, having filed over 20 similar complaints with the Department of Labor since 2009.¹ Under these circumstances, and in light of the well-reasoned decision below, we determine that review of this matter would, in our judgment, be inappropriate due to the uncontroverted and unexplained untimeliness of the complaints at issue and the lack of jurisdiction noted by the ALJ below.

Accordingly, the Petition for Review filed by Complainant is hereby **DENIED**. The ALJ’s Decision and Order, dated 25 September 2019, is the final agency action in this matter.

SO ORDERED.

¹ The ALJ outlined some of these complaints in footnote 1 of the Decision and Order.