



In the Matter of:

DEAN WOLSLAGEL,

ARB CASE NO. 11-079

COMPLAINANT,

ALJ CASE NO. 2009-SDW-007

v.

DATE: June 24, 2013

CITY OF KINGMAN, ARIZONA,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Dean Wolslagel, *pro se*, Kingman, Arizona

For the Respondent:

**Justin S. Pierce, Esq. and Victoria R. Torrilhon, Esq.; *Jackson Lewis LLP*,
Phoenix, Arizona**

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; E. Cooper Brown,
Deputy Chief Administrative Appeals Judge; and Lisa Wilson Edwards,
*Administrative Appeals Judge***

ORDER DENYING MOTION FOR RECONSIDERATION

The Administrative Review Board issued a Final Decision and Order in this case arising under the employee whistleblower protection provisions of the Clean Air Act (CAA), 42 U.S.C.A. § 7622 (West 2003); Safe Drinking Water Act (SDWA), 42 U.S.C.A. § 300(j)-9(i) (Thomson Reuters 2012); Water Pollution Control Act (WPCA), 42 U.S.C.A. § 1367 (West 2001); and their implementing regulations at 29 C.F.R. Part 24 (2012) (collectively, the “Environmental Acts”) on April 10, 2013. The Board dismissed the Complainant’s appeal because he failed to prove that his protected activity caused or was a motivating factor in the City of Kingman’s termination of his employment.

The Complainant has filed a Motion for Reconsideration on May 20, 2013. The Complainant filed his motion more than thirty days following the issuance of the Board's Final Decision and Order, so it is questionable whether his request for reconsideration should be treated as timely filed.¹ Nevertheless, given the Complainant's pro se status, we have considered the merits of his motion for reconsideration. On review of the Complainant's motion, we have determined that he has failed to demonstrate sufficient grounds warranting reconsideration.² Accordingly, the Complainant's motion for reconsideration is **DENIED**.

SO ORDERED.

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LISA WILSON EDWARDS
Administrative Appeals Judge

¹ See *Henrich v. Ecolab, Inc.*, ARB No. 05-030, ALJ No. 2004-SOX-051, slip op. at 11-16 (ARB May 30, 2007).

² 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 or misapprehended . . ." 15 Fed. R. App. P. 40(a)(2). In considering a motion for reconsideration, the ARB has applied a four-part test to determine whether the movant has demonstrated sufficient grounds warranting reconsideration:

- (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.

Abdur-Rahman v. DeKalb County, ARB Nos. 08-003, 10-074; ALJ Nos. 2006-WPC-002, -003; slip op. at 4 (ARB Feb. 16, 2011) (citing *Getman v. Southwest Secs., Inc.*, ARB No. 04-059, ALJ No. 2003-SOX-008, slip op. at 1-2 (ARB Mar. 7, 2006)). A motion for reconsideration that merely restates arguments previously presented on appeal will not merit ARB reconsideration. *McCloskey v. Ameriquest Mortg. Co.*, ARB No. 06-033, ALJ No. 2005-SOX-093, slip op. at 3 (ARB Mar. 26, 2008).