



IN THE MATTER OF:

WILLIAM ROSENFELD,

ARB CASE NO. 16-026

COMPLAINANT,

ALJ CASE NO. 2014-SOX-033

v.

DATE: May 26, 2017

COX ENTERPRISES, INC.,
THE ATLANTA JOURNAL-
CONSTITUTION, and
AETNA INSURANCE COMPANY,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

William B. Rosenfeld, *pro se*, Dayton, Ohio

For the Respondents Cox Enterprises, Inc. and Atlanta Journal Constitution:

Jeffrey T. Cox, Esq. and Christopher C. Hollon; *Faruki Ireland & Cox P.L.L.*,
Dayon Ohio

For the Respondents Aetna Insurance Co.:

Margaret H. Campbell, Esq.; *Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*;
Atlanta, Georgia

Before: Paul M. Igasaki, Chief Administrative Appeals Judge; and Joanne Royce,
*Administrative Appeals Judge*¹

¹ Administrative Appeals Judge Anuj C. Desai, who was a member of the panel that decided this case originally, is no longer a member of the Administrative Review Board.

ORDER DENYING MOTION FOR RECONSIDERATION

On May 24, 2016, the Administrative Review Board issued a Final Decision and Order Dismissing Appeal in this case arising under the employee protection provisions of the Sarbanes-Oxley Act of 2002 (SOX)² and the Consumer Financial Protection Act of 2010, Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.³ Denying Complainant William Rosenfeld's Petition for Review, the Board held:

On appeal, Rosenfeld fails to address the grounds for the ALJ's decision—that his Complaint was untimely—and his appeal must thus be dismissed. In his opening brief, Rosenfeld addresses the merits of his complaint at some length, but the Board cannot consider the merits because he failed to point to any mistakes in the ALJ's conclusion that his complaint was filed late. Indeed, he does not even dispute that his complaint was untimely, nor does he specifically address the ALJ's finding that he failed to establish any basis for tolling the limitations period.⁴

On May 9, 2017, almost a year after the Board issued its F. D. & O., Rosenfeld filed a Motion for Reconsideration. We deny the Motion for the following reasons.

DISCUSSION

The Board has inherent authority to reconsider its SOX decisions upon a timely motion for reconsideration.⁵ We have previously identified four non-exclusive grounds for reconsidering a final decision and order. The grounds for reconsideration include, but are not limited to, whether the movant has demonstrated

² 18 U.S.C. § 1514A (2012). SOX's implementing regulations are found at 29 C.F.R. Part 1980 (2015).

³ 12 U.S.C. § 5567 (2012) (CFPA). CFPA's implementing regulations are found at 29 C.F.R. Part 1985 (2015).

⁴ *Rosenfeld v. Cox Enters., Inc.*, ARB No. 16-026, ALJ No. 2014-SOX-033, slip op. at 3-4 (ARB May 24, 2016)(footnotes omitted)(F. D. & O.).

⁵ *Henrich v. Ecolab, Inc.*, ARB No. 05-030, ALJ No. 2004-SOX-051, slip op. at 2-4 (ARB May 30, 2007).

(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.^[6]

As an initial matter, a motion filed almost a year after the Board issued its decision, would not appear to be timely,⁷ but it is unnecessary to decide that issue in this case because Rosenfeld's motion does not discuss any of the Board's well-established grounds for granting reconsideration nor does it proffer any additional grounds that would justify such reconsideration.

In essence, Rosenfeld re-argues the merits of his contention that Respondents retaliated against him in violation of the SOX's employee protection provisions. But neither the ALJ, nor the Board considered the merits of Rosenfeld's complaint because the ALJ found that Rosenfeld failed to timely file it.⁸ The Board affirmed the ALJ's D. & O. because Rosenfeld failed to address the basis for the ALJ's D. & O. in his petition for review or brief to the Board on the timeliness issue. Accordingly, as Rosenfeld has failed to demonstrate any of the four grounds the Board has recognized as sufficient to justify reconsideration, nor any other sufficient ground, we **DENY** his motion for reconsideration.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

⁶ *Kirk v. Rooney Trucking*, ARB No. 14-035, ALJ No. 2013-STA-042, slip op. at 2 (ARB Mar. 24, 2016); *OFCCP v. Fla. Hosp. of Orlando*, ARB No.11-011, ALJ No. 2009-OFC-002, slip op. at 4, n.4 (ARB July 22, 2013) (Order Granting Motion for Reconsideration and Vacating Final Decision and Order Issued Oct. 19, 2012) (citation omitted).

⁷ *Accord Henrich*, ARB 05-030, slip op. at 4-18 (motion for reconsideration filed on 60th day after Board issued the decision of which reconsideration was requested was not timely).

⁸ *Rosenfeld v. Cox Enters., Inc.*, No. 2014-SOX-033 (Nov. 30, 2015)(D. & O.).