



IN THE MATTER OF:

WILLIAM ROSENFELD,

ARB CASE NO. 16-026

COMPLAINANT,

ALJ CASE NO. 2014-SOX-033

v.

DATE: MAY 24 2016

**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.*, Dayton 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; Joanne Royce, *Administrative Appeals Judge*; and Anuj C. Desai, *Administrative Appeals Judge*

FINAL DECISION AND ORDER DISMISSING APPEAL

On January 20, 2016, the Administrative Review Board received Complainant William Rosenfeld's motion requesting the Board to accept his opening brief filed out of time, in this case arising under the employee protection provisions of the Sarbanes-Oxley

Act of 2002 (SOX)¹ and the Consumer Financial Protection Act of 2010, Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.² Respondents Cox Enterprises and Atlanta Journal Constitution filed a reply urging the Board to deny Rosenfeld's motion and dismiss his appeal arguing:

[A]cross the nearly two years since Complainant first lodged his on-line (and already time-barred) complaint, all of the Respondents have dutifully responded to Complainant's shifting allegations, theories and demands, made both in papers submitted through the Department of Labor adjudicative process, as well as in a relentless stream of email correspondence directed at all Respondents, counsel and others. At no point, has Complainant advanced a theory or legal argument that is founded on actionable legal grounds. Indeed, Complainant's latest set of contentions, as the Cox Respondents understand them, do not appeal from Judge Silvain's November 30, 2015 Decision and Order so much as attempt to assert new or different claims and arguments.^[3]

We have reviewed Rosenfeld's petition for review and brief and agree that he has failed to sufficiently address or demonstrate error in the Administrative Law Judge's determination that he failed to timely file a complaint in this case.⁴ Accordingly, for the following reasons, we dismiss his appeal.

DISCUSSION

A complainant must file a complaint for relief under SOX's and CFPA's whistleblower protection provisions no later than 180 days after the date on which the violation occurred.⁵ Interpreting Rosenfeld's complaint liberally, given his pro se status, the ALJ found that, at its earliest, the limitations period on Rosenfeld's complaint began

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

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

³ Memorandum of Respondents Cox Enterprises, Inc. and the Atlanta Journal-Constitution in Reply to Complainant's Motion to Accept Brief Out of Time at 2. Aetna Insurance also urged the Board to deny Rosenfeld's motion.

⁴ *Rosenfeld v. Cox Enters., Inc.*, No. 2014-SOX-033 (Nov. 30, 2015)(D. & O.).

⁵ 29 C.F.R. § 1980.103(d).

to run on September 15, 1997, when he entered into a settlement following the termination of his employment with Atlanta Journal Constitution and whose terms, Rosenfeld now claims are fraudulent. At the latest, the ALJ found that the limitations period began to run two years prior to the date on which Rosenfeld filed his complaint, when his request for an increase in his disability payment was denied.⁶ Thus, the ALJ found that Rosenfeld's complaint was untimely as neither event happened within 180 days of the date on which Rosenfeld filed his complaint.

Although Rosenfeld did not raise any equitable tolling arguments, the ALJ nevertheless addressed the issue. The ALJ found that even if Rosenfeld had raised an equitable tolling defense, the factors required to prevail on such a defense were not present. The ALJ found that Rosenfeld presented no evidence to show that Respondents "actively misled Complainant, that Complainant was prevented from asserting his rights in some extraordinary way, or that Complainant raised the claim in the wrong forum."⁷ Accordingly, the ALJ granted Respondents' Motion to Dismiss, finding that "there are no genuine issues of material fact relative to Complainant's filing of his claim, that it is time-barred under 18 U.S.C. § 1514A(b)(2)(D), and that Respondents are entitled to judgment as a matter of law."⁸

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.⁹ 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,¹⁰ nor does he specifically address the ALJ's finding that he failed to establish

⁶ D. & O. at 5, 10.

⁷ *Id.* at 10. The Board also applies these factors to determine the availability of equitable tolling to a late-filed complaint. *Turin v. Amtrust Fin. Servs., Inc.*, ARB No. 11-062, ALJ No. 2010-SOX-018, slip op. at 8 (ARB Mar. 29, 2013).

⁸ *Id.* at 11.

⁹ *Peterson v. Union Pac. R.R. Co.*, ARB No. 13-90, ALJ No. 2011-FRS-017, slip op. at 4 (ARB Nov. 20, 2014) ("Beyond this bare objection, however, Union Pacific offered no argument whatsoever regarding the ALJ's award of compensatory damages or reinstatement. We therefore consider those issues waived and affirm the ALJ's award . . .").

¹⁰ In his petition for review, Rosenfeld stated that "[t]he incident that caused me to submit my complaint to the DOL, which was submitted as evidence in June 2014 . . . was a letter dated February 13, 2014 that was sent to me by Jeffery [sic] T. Cox, who currently represents Cox Enterprises as their Attorney in this case. The letter, written by Mr. Cox clearly enforces the severance agreement . . ." Petition for Review at 1. It is not clear whether Rosenfeld is attempting to rely on this letter as an adverse action arising within the limitations period. The letter is not included in the record that was before the ALJ and that is currently before this Board. Further, Rosenfeld did not mention it in his opening brief. In

any basis for tolling the limitations period. In arguing that ALJ's decision should be reversed, he states only that

It is my hope that with this understanding of the reasons (including company actions and multiple warnings from the Cox Enterprises legal department to cease and desist all call, complainants and attempts for legal action . . . multiple documentation of this available) for the gaps in time from the time of my forced and fraudulent separation from Cox Enterprises, the review board and other decision makers will toll the . . . statute of limitation through whatever means possible.^[11]

In consideration of Rosenfeld's pro se status, we have granted his motion to accept his brief, time having expired, given his unfamiliarity with the Board's electronic docketing system. However, given that the brief does not address the basis for the ALJ's decision nor points to any error in the findings that Rosenfeld's complaint was untimely and that he failed to establish any equitable tolling grounds, it is unnecessary to require Respondents to expend further resources to respond to Rosenfeld's brief, as there are no relevant legal arguments to respond to.

any event, the adverse action, if any, occurred when the parties signed the agreement in 1997, not by subsequent letters referencing its terms.

¹¹ Supporting Legal Brief of Points and Authorities at 4 (first alteration in original). Rosenfeld also stated in his Petition for Review, "I have documents that prove not only can I meet one of the criteria mentioned in the letter from his honor listed to toll the statute of limitations but all three." These documents are not in the record on appeal to the Board, nor has Rosenfeld explained how any of these records would establish grounds for tolling.

Accordingly, because we find that Rosenfeld has failed to demonstrate error in the ALJ's D. & O., we **GRANT** his motion to accept his brief filed out of time, but **DISMISS** his appeal.

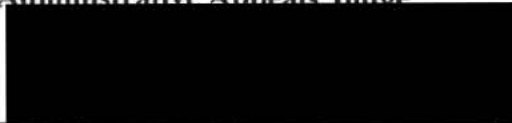
SO ORDERED.



PAUL M. IGASAKI
Chief Administrative Appeals Judge



JOANNE ROYCE
Administrative Appeals Judge



ANUJ C. DESAI
Administrative Appeals Judge