



IN THE MATTER OF:

MICHAEL B. BROWN,

ARB CASE NO. 17-037

COMPLAINANT,

ALJ CASE NO. 2015-SOX-018

v.

DATE: June 27, 2017

**SYNOVUS FINANCIAL
CORP.,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Michael B. Brown, *pro se*, Columbus, Georgia

For the Respondent:

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

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge* and Leonard J. Howie III,
*Administrative Appeals Judge***

ORDER DENYING MOTION FOR RECONSIDERATION

On May 17, 2017, the Administrative Review Board issued a Final Decision and Order Dismissing Untimely Appeal in this case arising under the employee protection provisions of the Sarbanes-Oxley Act of 2002 (SOX).¹ Initially, the Board rejected Complainant Michael B.

¹ 18 U.S.C.A. § 1514A (Thomson West Supp. 2016). SOX's implementing regulations are

Brown's Motion and Brief to Set Aside the Order Due to Fraud on the Court concluding that:

The Secretary of Labor has delegated to the Board the limited responsibility to act for the Secretary and issue final agency decisions in review or upon appeal of final decisions of Department of Labor Administrative Law Judges (and the Wage and Hour Administrator and his or her authorized representative). To invoke the Board's authority to review a decision of an ALJ under the SOX's employee protection provisions, the party must file a petition for review within 14 days of the date of the ALJ's decision. Complainant has not filed a petition for review of an Administrative Law Judge's decision in this case. Instead he has filed a Motion and Brief to Set Aside the Order Due to Fraud on the Court. Brown has not cited to any authority that would permit the Board to consider such a motion. However, given Brown's pro se status, the Board will consider the Motion to constitute a petition for review of the ALJ's decision.^[2]

Considering Brown's Motion as a Petition for Review, the Board ultimately concluded that because the "petition" was not filed within the applicable limitations period (14 days) of the date on which Brown learned that his attorney had failed to file a petition, after telling Brown he would do so, it was not timely.³

On June 19, 2017, Brown filed "Complainant Michael B. Brown's Motion for the Board to Entertain an Independent Action to Reconsider its May 17, 2017 Final Decision and Order and Relieve the Complainant from the Decision and Order and Motion for the Board to Entertain an Independent Action to Set Aside the Court Order Due to Fraud on the Court." The Board has authority to reconsider its SOX decisions upon a timely motion for reconsideration.⁴ We have

found at 29 C.F.R. Part 1980 (2016).

² *Brown v. Synovus Financial Corp.*, ARB No. 17-037, ALJ No. 2015-SOX-018, slip op. at 2, (ARB May 17, 2017).

³ *Id.* at 2-3. *Accord Hillis v. Knochel Bros., Inc.*, ARB Nos. 03-136, 04-081, 04-148; ALJ No. 2002-STA-050, slip op. at 8-9 (ARB Reissued Mar. 31, 2006)(citing *Socop-Gonzales v. INS*, 272 F.3d 1176, 1195 (9th Cir. 2001)(90-day limitations period began to run on the date Socop first learned that there was a problem with his attempt to adjust his immigration status, i.e. from the date of the action that gave rise to his entitlement to equitable tolling)). In this case the date that gave rise to Brown's entitlement to equitable tolling was the date on which he learned that his attorney had not filed the petition for review as he said he would i.e., January 14, 2017.

⁴ 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).

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:

(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.^[5]

Brown's motion does not address 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, Brown re-argues the merits of his contention that the Boards should consider his motion alleging fraud on the court and his argument that special circumstances exist to justify his failure to timely file his petition for review. Accordingly, because Brown 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

LEONARD J. HOWIE III
Administrative Appeals Judge

⁵ *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).