



**In the Matter of:**

**RICHARD STACHOWSKI,**  
**COMPLAINANT,**

**v.**

**RUPP MASONRY, INC.,**  
**RESPONDENT.**

**ARB CASE NO. 09-062**

**ALJ CASE NO. 2009-TSC-001**

**DATE: November 30, 2010**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearance:**

***For the Complainant:***

**Richard Stachowski, *pro se*, Madison Heights, Michigan**

**BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*, E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*, and Luis A. Corchado, *Administrative Appeals Judge*.**

**FINAL DECISION AND ORDER**

The Complainant, Richard Stachowski, filed a retaliation complaint under the employee protection provisions of the Toxic Substances Control Act of 1986 (TSCA), 15 U.S.C.A. § 2622 (Thomson/Reuters 2009) and its interpretive regulations, 29 C.F.R. Part 24 (2010). A Department of Labor (DOL) Administrative Law Judge (ALJ) dismissed Stachowski's complaint as untimely filed. *Stachowski v. Rupp Masonry*, ARB 09-062, ALJ No. 2009-TSC-001 (Feb. 9, 2009). Adopting the ALJ's statement of the facts and conclusions of law, ALJ Order Dismissing Complaint, at 1-3, the Administrative Review Board (ARB or Board) summarily affirms the ALJ's dismissal of the complaint.

## BACKGROUND

Stachowski's last day of work at Rupp Masonry was on May 31, 2002, when he became ill. CX B, Application for Mediation or Hearing – Form A, Michigan Department of Labor & Economic Growth, Workers' Compensation Agency (Feb. 28, 2006). Between 2006 and 2008, Stachowski was involved in matters before the Michigan Occupational Safety and Health Administration (MIOSHA) and the Workers' Compensation Agency relating to an injury he allegedly sustained at work on May 31, 2002.

Stachowski did not file his complaint with the DOL until September 23, 2008. Because he filed his complaint more than thirty days following the termination of his employment, the ALJ dismissed his complaint as not timely filed.

## JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the TSCA. Secretary's Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010). Under the Administrative Procedure Act, the ARB, as the Secretary's designee, acts with all the powers the Secretary would possess in rendering a decision under the whistleblower statutes. *See* 5 U.S.C.A. § 557(b) (West 1996). Accordingly, the ARB reviews questions of law presented on appeal de novo, but is bound by the ALJ's findings of fact if supported by substantial evidence on the record considered as a whole. 29 C.F.R. § 24.110.

## DISCUSSION

As previously noted, Stachowski's TSCA claim was filed with OSHA more than six years following the termination of his employment, well beyond the prescribed 30-day period for filing such a claim. Stachowski bears the burden of justifying the application of equitable tolling principles that would legally excuse his untimely filing. *Wilson v. Sec'y, Dep't of Veterans Affairs*, 65 F.3d 402, 404 (5th Cir. 1995). The 30-day statute of limitations period for filing a TSCA claim is not jurisdictional and, as the Board has repeatedly held, the limitations period may thus be equitably tolled upon a showing of any of the factors identified in *School Dist. of Allentown v. Marshall*, 657 F.2d 16, 19-21 (3d Cir. 1981).<sup>1</sup>

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<sup>1</sup> The *Allentown* factors include: "when (1) the defendant has actively misled the plaintiff respecting the cause of action, (2) the plaintiff has in some extraordinary way been prevented from asserting his rights, or (3) the plaintiff has raised the precise statutory claim in issue but has mistakenly done so in the wrong forum." *Allentown*, 657 F.2d at 20. The Board has not found these situations to be exclusive. *See Hyman v. KD Res.*, ARB No. 09-076, ALJ No. 2009-SOX-020, slip op. at 7-8 (ARB Mar. 31, 2010) (recognizing as an additional basis for equitable estoppel, "where the

However, Stachowski did not expressly argue to the ALJ, nor does he argue to the Board, that equitable tolling principles should apply that would effectively render his TSCA filing timely. Instead, Stachowski challenges the ALJ's dismissal of his complaint as untimely by documenting the intervening claims he filed following the termination of his employment. Specifically, Stachowski points to his filing of a workers' compensation claim and his complaint filed with MIOSHA. Affording Stachowski, who appears pro se, the benefit of the doubt,<sup>2</sup> we liberally construe his recitation of this intervening litigation as implicitly suggesting that the this litigation equitably tolled the running of the filing deadline for his TSCA claim, thereby invoking the defense that he "raised the precise statutory claim in issue but has done so in the wrong forum." *Allentown*, 657 F.2d at 20.

It is clear, however, from Stachowski's brief on appeal and the cited orders, responses, and exhibits pertaining to his workers' compensation and MIOSHA claims, that the intervening claims had nothing to do with the TSCA. Nor do they even reference that he engaged in any protected activity or that his employer took any adverse action against him in violation of the TSCA. Therefore, the previous claims that he filed cannot, even under the most liberal of interpretations, be considered sufficient to constitute the "precise statutory claim in issue" filed in the wrong forum. Accordingly we hold that Stachowski has failed to meet his burden of establishing that the 30-day statute of limitations period for filing a complaint under the TSCA should be equitably tolled, and thus affirm the ALJ's dismissal of his complaint as untimely filed.

## CONCLUSION

The ALJ's decision concluding that Stachowski's complaint was untimely filed is supported by the substantial evidence of record and is in accordance with applicable law.

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employer's own acts or omissions have lulled the plaintiff into foregoing prompt attempts to vindicate his rights." (citations omitted)).

<sup>2</sup> Stachowski appears before the ARB without the benefit of legal counsel. As we have stated previously, "[w]e construe complaints and papers filed by pro se complainants 'liberally in deference to their lack of training in the law' and with a degree of adjudicative latitude." *Trachman v. Orkin Exterminating Co. Inc.*, ARB No. 01-067, ALJ No. 2000-TSC-003, slip op. at 6 (ARB Apr. 25, 2003); see also *Martin v. Akzo Nobel Chems., Inc.*, ARB No. 02-031, ALJ No. 2001-CAA-016, slip op. at 2 n.2 (ARB July 31, 2003) (liberally construing pro se litigant's only filing to the ARB, a copy of the same post-hearing brief submitted to the ALJ, as a brief "asserting that the ALJ's conclusions of law were erroneous"). However, pro se litigants have the same burdens of proving the necessary elements of their cases as litigants represented by counsel. See *Young v. Schlumberger Oil Field Serv.*, ARB No. 00-075, ALJ No. 2000-STA-028, slip op. at 10 (ARB Feb. 28, 2003).

**ORDER**

The ALJ's Order Dismissing Complaint herein appealed is summarily **AFFIRMED**. Stachowski's complaint is **DENIED** as untimely filed.

**SO ORDERED.**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**E. COOPER BROWN**  
**Deputy Chief Administrative Appeals Judge**

**LUIS A. CORCHADO**  
**Administrative Appeals Judge**