



In the Matter of:

JOSEPH LEMPA,

ARB CASE NO. 2018-0046

COMPLAINANT,

ALJ CASE NO. 2017-AIR-00008

v.

DATE: July 23, 2019

HAWTHORNE GLOBAL AVIATION
and HEARTLAND AVIATION,

RESPONDENTS.

Appearances:

For the Complainant:

Soma G. Priddle, Esq.; *Soma G. Priddle, Esq. LLC*; Norwalk, Wisconsin

For the Respondent:

Geoffrey A. Lacy, Esq.; *Strang, Patteson, Renning, Lewis & Lacy, S.C.*;
Green Bay, Wisconsin

FINAL DECISION AND ORDER

PER CURIAM. This matter arises under the employee protection provision of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.¹ In a complaint filed with the Department of Labor's Occupational Safety and Health

¹ 49 U.S.C. § 42121 (2000) (AIR 21); 29 C.F.R. Part 1979 (2018).

Administration (OSHA), Joseph Lempa alleged that his employment with Heartland Aviation (Heartland) was terminated in retaliation for raising air transportation safety concerns.² OSHA concluded that the claim was not timely filed and dismissed the complaint. Complainant requested a hearing before an administrative law judge (ALJ), which was held on July 11 and 12, 2017. Subsequently, the Administrative Law Judge issued a Decision and Order Denying Relief in which he found that the claim was filed after the 90-day filing period set forth in 49 U.S.C. § 42121(b), and thus dismissed the claim. We affirm.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the ARB authority to hear appeals and issue final agency decisions under AIR 21 and its implementing regulations.³ The ARB reviews questions of law presented on appeal de novo, but is bound by the ALJ's factual findings as long as they are supported by substantial evidence.⁴

DISCUSSION

The ALJ found that Complainant was terminated on May 31, 2016, Decision and Order at 50, and did not file a complaint with OSHA until September 12, 2016, *id.* at 51, over 100 days after adverse action had been taken against him. The ALJ's findings are supported by substantial evidence as described in the decision below and are affirmed. As such, the ALJ's decision to dismiss the complaint as untimely was in accordance with applicable law, and we adopt the ALJ's well-reasoned Decision and Order Denying Relief as our own and attach a copy hereto. Thus, the ALJ's decision is now the final decision of the Secretary of Labor.

² While the ALJ noted that Hawthorne Global Aviation (HGA) also contested liability as a responsible employer, he did not resolve this issue given his finding that the claim was not timely filed. Given the ultimate disposition of this case, we hold that any error in this regard was harmless.

³ Secretary's Order No. 01-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13,072 (April 3, 2019); 29 C.F.R. § 1979.110(a).

⁴ 29 C.F.R. § 1982.110 (2018); *Palmer v. Canadian Nat'l Ry. / Ill. Cent. R.R. Co.*, ARB No. 16-035, ALJ No. 2014-FRS-154, slip op. at 14-15 (ARB Sept. 30, 2016, reissued Jan. 4, 2017).

We reject Complainant's request to submit evidence to the Board that was not part of the administrative record at the hearing below.⁵ In addition, we reject Respondent's request for attorney's fees in the amount of \$1,000 to be paid by Complainant; while we hold that the appeal is groundless, the evidence does not support a conclusion that this appeal was frivolous or brought in bad faith.⁶

SO ORDERED.

⁵ 29 C.F.R. § 18.54(c) (2018); see *Welch v. Cardinal Bankshares Corp.*, ARB No. 06-062, ALJ No. 2008-SOX-015, slip op. at 5-6 (ARB June 9, 2006) (denying stay).

⁶ 29 C.F.R. § 1979.110(a); *Reamer v. Ford Motor Co.*, ARB No. 09-053, ALJ No. 2009-SOX-003, slip op. at 7 (ARB July 21, 2011) (denying Respondent's motion for attorney's fees).