



In the Matter of:

GREGORY KELLY,

ARB CASE NO. 2019-0080

COMPLAINANT,

**ALJ CASE NOS. 2019-CER-00001
2019-ERA-00007
2019-CAA-00004
2019-CAA-00005**

v.

DATE: September 30, 2019

**STATE OF ALABAMA PUBLIC
SERVICE COMMISSION,**

RESPONDENT.

Appearances:

For the Complainant:

Gregory Kelly, *pro se*, Montgomery, Alabama

For the Respondent:

**State of Alabama Public Service Commission,
Montgomery, Alabama**

**BEFORE: William T. Barto, *Chief Administrative Appeals Judge* and
Heather C. Leslie, *Administrative Appeals Judge***

FINAL DECISION AND ORDER DENYING PETITION FOR REVIEW

As noted by the Administrative Law Judge (ALJ) below, in 2018 and 2019 Gregory Kelly (“Kelly” or “Complainant”) filed multiple complaints with the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”)

under various environmental whistleblower statutes, including, but not limited to, the Clean Air Act (“CAA”). 42 U.S.C. § 7622; 29 C.F.R. § 24.100, et seq. By letter, OSHA notified Complainant that it was dismissing his complaints because they were untimely and failed to establish reasonable cause to believe that whistleblower retaliation had occurred. Complainant filed objections and requests for hearing with the Office of Administrative Law Judges challenging OSHA’s determinations. Noting jurisdictional issues raised by the various complaints, the ALJ assigned to hear the case directed the Complainant to show cause why his complaints should not be dismissed and provided him an opportunity to submit additional evidence and argument. The ALJ reviewed Complainant’s submissions and determined that they were nonresponsive to the issues noticed in the Orders to Show Cause. The ALJ concluded that, to the extent that Complainant’s filings may have stated a complaint under any of the whistleblower protection statutes within his jurisdiction, the complaints were untimely. And to the extent that Complainant’s filings may have stated a claim under various non-whistleblower-protection statutes, the ALJ concluded that he lacked jurisdiction to adjudicate those claims. For these reasons, the ALJ dismissed the complaints before him.

Complainant timely filed a petition for review with the Administrative Review Board (ARB or Board). “The Board may decline review of any case whenever in its judgment review would be inappropriate because of lack of timeliness, the nature of the relief sought, the case involves only settled issues of law, the appeal is frivolous on its face, or other reasons.” 29 C.F.R. § 8.9(a)(2018); Secretary’s Order No. 01-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13,072 (Apr. 3, 2019)(directing use of rules of practice at 29 C.F.R. Part 8 for, inter alia, whistleblower appeals).

Upon review of the matters submitted by Complainant in connection with his petition, we are unable to identify any explanation as to the untimeliness of his putative whistleblower complaints, as found by the ALJ below, nor is there any argument advanced by Complainant as to why the Department of Labor might have jurisdiction over the various other claims raised in his pleadings. We have considered the fact that Complainant is self-represented, but we also note that he is an experienced litigant, having filed over 20 similar complaints with the Department of Labor since 2009. Under these circumstances, and in light of the well-reasoned decision below, we determine that review of this matter would, in our judgment, be inappropriate due to the uncontroverted and unexplained

untimeliness of the complaints at issue and the lack of jurisdiction noted by the ALJ below.

Accordingly, the Petition for Review filed by Complainant is hereby **DENIED**. The ALJ's Decision and Order, dated 22 August 2019, is the final order of the Secretary of Labor in this matter. *See* 29 C.F.R. § 24.110(b).

SO ORDERED.