



In the Matter of:

PEROUMAL PAJANY,

ARB CASE NO. 2019-0071

PROSECUTING PARTY,

ALJ CASE NO. 2019-LCA-00015

v.

DATE: January 25, 2021

CAPGEMINI, INC.,

RESPONDENT.

Appearances:

For the Prosecuting Party:

Peroumal Pajany; *pro se*; Powell, Ohio

For the Respondent:

**Matthew S. Dunn; *Kramer Levin Naftalis & Frankel LLP*; New York,
New York**

**Before: James D. McGinley, *Chief Administrative Appeals Judge*, Thomas
H. Burrell and Stephen M. Godek, *Administrative Appeals Judges***

DECISION AND ORDER

PER CURIAM. This case arises under the H-1B visa program of the Immigration and Nationality Act, as amended (INA), 8 U.S.C. § 1101(a)(15)(H)(i)(b) (2014) and 8 U.S.C. § 1182(n) (2013). The statute has implementing regulations at 20 C.F.R. Part 655, Subparts H and I (2020). On July 3, 2019, an Administrative Law Judge (ALJ) issued a Decision and Order Granting Respondent's Motion to Dismiss, Cancelling Hearing and Cancelling Telephone Conference (D. & O.). Peroumal Pajany (Complainant) petitioned the Administrative Review Board (ARB or Board) for review. For the following reasons, we affirm the ALJ's D. & O.

BACKGROUND

On March 29, 2018, Complainant, a U.S. citizen, filed a Complaint with the Wage and Hour Division (WHD), alleging that his former employer, Capgemini, Inc. (Respondent), had committed several violations of the H-1B provisions under 20 C.F.R. § 655.805(a).

After an investigation, the WHD Administrator issued a determination letter finding that Respondent had not committed a violation under the H-1B provisions of the INA. Subsequently, Complainant requested a hearing with an ALJ.

The ALJ set the case for a hearing on July 9, 2019. On June 24, 2019, Respondent filed a Motion to Dismiss and attached supporting evidentiary materials. Due to Respondent's evidentiary materials, the ALJ considered converting the Motion to Dismiss into a Motion for Summary Decision. Thus, the ALJ ordered Complainant to submit "information sufficient to create a justiciable question of fact," which Complainant provided on July 2, 2019.¹

After reviewing Complainant's evidence, the ALJ decided that he did "not need to consider any evidentiary materials outside the pleadings in order to rule on Respondent's Motion."² Therefore, on July 3, 2019, the ALJ issued an order granting Respondent's Motion to Dismiss,³ and dismissing the Complaint for failure to state a claim that Respondent had violated a provision of 20 C.F.R. § 655.805(a).

On July 23, 2019, Complainant filed a Petition for Review with the ARB, which included 348 pages of documents.⁴

¹ D. & O. at 2.

² *Id.*

³ *Id.*

⁴ Complainant's Petition for Review had numerous attachments, including new evidence and documents, along with filings and evidence originally submitted to the ALJ. The Petition for Review and its various attachments will collectively be referred to as the Petition for Review.

JURISDICTION

This Board has jurisdiction to review the ALJ's decision and order in cases under the H-1B provisions of the Immigration and Nationality Act.⁵

DISCUSSION

Under 20 C.F.R. § 655.845, a petition for the Board's review shall "[s]tate the specific reason or reasons why the party petitioning for review believes such decision and order are in error." Moreover, after clearly identifying reasons why the ALJ erred, the petitioning party has a responsibility to substantiate those reasons with legal authority.⁶ We also note that "[d]espite the fact that [pro se] filings are construed liberally, the Board must be able to discern cogent arguments" on appeal.⁷

In his Petition for Review, Complainant extensively argues that the ALJ was biased, manipulated his case, fabricated documents, and committed forgery, among other attacks. Complainant fails to support any of these accusations. Construing his pleading liberally, Complainant appears to argue that the ALJ erred because he did not consider fully Complainant's evidence or appropriately analyze his claims. Complainant asserts that the ALJ issued a "wrong order" and that Complainant's "348-page document" proves that "Capgemini violated § 655.805(a)."⁸ While Complainant's arguments on appeal repeatedly assert that the ALJ erred, Complainant fails to clearly identify a sufficient basis for reversal.⁹ Throughout his arguments on appeal, Complainant fails to clearly identify reasons why the ALJ

⁵ See 20 C.F.R. § 655.845; see also Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)), 85 Fed. Reg. 13186 (Mar. 6, 2020).

⁶ See *Fleming v. The Shaw Group*, ARB No. 2014-0070, ALJ No. 2013-ERA-00014, slip op. at 2 (ARB Aug. 19, 2015) ("[P]ro se status does not absolve [a party] of the obligation to identify issues for this Board to review on appeal and to substantiate those issues with supported legal argument.") (citations omitted).

⁷ *Hasan v. Sargent & Lundy*, ARB No. 2005-0099, ALJ No. 2002-ERA-00032, slip op. at 8 (ARB Aug. 31, 2007) (citations omitted).

⁸ On August 15, 2019, the ARB issued an Order noting that Complainant's "pleading filed on July 29, 2019" is his "opening brief."

⁹ See *Fleming*, ARB No. 2014-0070, slip op. at 2 (putting forth "conclusory assertions" did not constitute a "sufficient basis for reversal even when viewed with the latitude warranted by [the party's] pro se status.").

erred and substantiate those reasons with legal authority.¹⁰ Thus, Complainant's alleged errors are deemed forfeited or waived.¹¹

CONCLUSION

For the foregoing reasons, the Complainant's Petition for Review is **DISMISSED** and the ALJ's D. & O. is **AFFIRMED**.

SO ORDERED.

¹⁰ See *Dev. Res., Inc.*, ARB No. 2002-0046, slip op. at 4 (ARB Apr. 11, 2002) (citing *Tolbert v. Queens Coll.*, 242 F.3d 58, 75 (2d Cir. 2001) (noting that in the Federal Courts of Appeals, it is a "settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.") (citation omitted)); see also *U.S. v. Hayter Oil Co.*, 51 F.3d 1265, 1269 (6th Cir. 1995) ("[I]t is not our function to craft an appellant's arguments.") (citation omitted); *U.S. v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (stating "[a] skeletal 'argument,' really nothing more than an assertion, does not preserve a claim [for appellate review] . . . Judges are not like pigs, hunting for truffles buried in briefs.") (citations omitted).

¹¹ The Board also notes that Complainant asserted several other errors on appeal, but the arguments were often difficult to understand or only contained unsupported assertions. Because the additional arguments failed to articulate discernable reasons for how the ALJ committed reversible error, and lacked the support of legal authority, the Board declines to consider them.