

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



In the Matter of:

APOSTOLOS XANTHOPOULOS,

ARB CASE NO. 2022-0032

COMPLAINANT,

ALJ CASE NO. 2021-SOX-00017

v.

DATE: June 30, 2022

**MERCER INVESTMENT
CONSULTING, SUBSIDIARY
OF MARSH & MCLENNAN
COMPANIES, INC.,**

RESPONDENT.

Appearances:

For the Complainant:

Apostolos Xanthopoulos; *Pro Se*; Mount Prospect, Illinois

For the Respondent:

Alexa J. Laborda Nelson, Esq., and Edward T. Ellis, Esq., *Littler Mendelson, P.C.*; Philadelphia, Pennsylvania

Kelli C. Fuqua, Esq.; *Littler Mendelson, P.C.*; Austin, Texas

Before: Susan Harthill, *Chief Administrative Appeals Judge*, Thomas H. Burrell and Tammy L. Pust, *Administrative Appeals Judges*

ORDER REESTABLISHING BRIEFING SCHEDULE

PER CURIAM. This case arises under the employee protection provision of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title

VIII of the Sarbanes-Oxley Act (SOX).¹ Complainant Apostolos Xanthopoulos, who is proceeding pro se, filed a whistleblower complaint against Respondent Mercer Investment Consulting alleging that Respondent retaliated against him in violation of SOX. On March 18, 2022, a United States Department of Labor Administrative Law Judge issued a Decision and Order Granting Summary Decision and Dismissing Complaint (the D. & O.).

Complainant appealed the D. & O. to the Administrative Review Board (the Board) on April 2, 2022, using the Board's electronic filing system (EFS). On April 6, 2022, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule (the Briefing Order). On the same day, the EFS automatically sent an email to the email account Complainant registered with the system, notifying him of the issuance of the Briefing Order and providing him with a hyperlink thereto. The Briefing Order directed Complainant to file his opening brief by May 4, 2022.

Complainant did not file an opening brief as ordered. Consequently, on May 25, 2022, the Board issued an Order to Show Cause requiring Complainant to explain why the Board should not dismiss his appeal for failing to file a timely opening brief. The Board ordered Complainant to file his response to the Order to Show Cause, as well as a copy of his opening brief, by June 6, 2022.

On June 6, 2022, Complainant filed a response to the Order to Show Cause, as well as a copy of his opening brief. Complainant asserts that he did not receive the EFS email notifying him that the Board had issued the Briefing Order, and did not otherwise know that it had been issued until he received the EFS email notification for the Order to Show Cause on May 25, 2022. Complainant asks the Board to excuse his failure to file an opening brief as originally ordered, given his lack of knowledge of the Briefing Order. Respondent filed a reply to Complainant's response to the Order to Show Cause on June 21, 2022, acknowledging that it does not have any information about whether Complainant actually received notice of the Briefing Order on April 6, 2022.

The Board has the inherent "authority to effectively manage its docket" to "achieve orderly and expeditious disposition of cases."² Pursuant to this authority, the Board can "issue sanctions, including dismissal, for a party's failure to comply

¹ 18 U.S.C. § 1514A.

² *Govindarajan v. N2 Servs., Inc.*, ARB No. 2020-0032, ALJ No. 2020-LCA-00001, slip op. at 2 (ARB Mar. 17, 2021) (quotations and citation omitted).

with the Board's orders and briefing requirements.”³ We recognize that dismissal of an appeal or a complaint is a serious sanction which should not be taken lightly.⁴

We conclude that dismissal of Complainant's appeal is not an appropriate sanction at this time, for the following reasons. System records reflect that the EFS successfully generated and sent notice of the Briefing Order to Complainant's registered email account on April 6, 2022. Although the system sent the notice to Complainant, we accept Complainant's representation that, at the very least, he did not see that notice or learn of the Briefing Order until the Board issued the Order to Show Cause on May 25, 2022. Consistent with Complainant's representation, the EFS system records reflect that Complainant did not access the Briefing Order until May 26, 2022, one day after the Board issued the Order to Show Cause. The Board's records also confirm that Complainant contacted the Board on May 27, 2022, one day after first accessing the Briefing Order, and the Department of Labor's National Call Center on May 31, 2022, to determine how he had missed the Board's order and what could be done to rectify the error.

Although Complainant missed the original briefing deadline, Complainant complied with the Order to Show Cause by filing a timely response and opening brief. Complainant has now committed to “checking every single link that [he] see[s], on a daily basis, on the website” to ensure that he does not miss another scheduled event in this case.

Considering these circumstances, and in recognition of Complainant's status as a pro se litigant, we excuse Complainant's tardiness in this instance and accept his opening brief. Going forward, Complainant is expected to strictly adhere to future deadlines, Board orders, and applicable rules of practice and procedure. Additional violations will not be tolerated and will result in appropriate sanctions, including potential dismissal of this appeal. To ensure compliance with future deadlines and orders and to ensure that the circumstances that led to Complainant's tardiness in this instance do not reoccur, Complainant is directed to regularly check the EFS system and to regularly check the spam and other subfolders of his email account for EFS notices that his email service provider may

³ *Id.* (quotations and citation omitted).

⁴ *See Bidwai v. Bd. of Educ. of Prince George's Cnty.*, ARB No. 2012-0072, ALJ No. 2011-LCA-00029, slip op. at 2-3 (ARB Oct. 11, 2012); *Claypoole v. U.S. Xpress Enter.*, ARB No. 2008-0058, ALJ No. 2008-STA-00002, slip op. at 4-5 (ARB Nov. 28, 2008).

misdirect. We also direct Complainant to read the Board's EFS pro se user guide⁵ and the Board's rules of practice and procedure.⁶

The briefing schedule is reestablished and amended, as follows:

RESPONSE BRIEF: Within twenty-eight (28) calendar days from the date of this Order, Respondent must file with the Board any response brief in opposition to Complainant's opening brief, not to exceed fifty (50) double-spaced pages.

REPLY BRIEF: Within fourteen (14) calendar days of the service of a legal brief in opposition to Complainant's opening brief, Complainant may file with the Board a reply brief not to exceed twenty (20) double-spaced pages.

In all other respects, the Board's Notice of Appeal and Order Establishing Briefing Schedule remains in effect.

SO ORDERED.

⁵ See <https://efile.dol.gov/system/files/2020-11/user-guides-for-prose-and-other-non-attorney.pdf>.

⁶ See <https://www.dol.gov/agencies/arb/resources/rules>. The Board also provides other resources to litigants on its website, including instructions on how to make citations to legal authority and answers to frequently asked questions. See <https://www.dol.gov/agencies/arb>.