



In the Matter of:

HENRY KLEIN,

ARB CASE NO. 2022-0016

COMPLAINANT,

ALJ CASE NO. 2020-SOX-00039

v.

DATE: May 19, 2022

BANK OF AMERICA,

RESPONDENT.

Appearances:

For the Complainant:

Henry Klein; *pro se*; Kanas City, Missouri

For the Respondent:

Charles Edward Solley, Esq.; *Moser Law Co.*; Atlanta, Georgia

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

ORDER DENYING RECONSIDERATION

PER CURIAM. The Complainant, Henry Klein, filed a retaliation complaint against his employer, Bank of America, under the Sarbanes-Oxley Act of 2002 (SOX).¹ On December 16, 2021, the Administrative Review Board (Board) issued a Notice of Appeal and Order Establishing Briefing Schedule. On February 3, 2022,

¹ 18 U.S.C. § 1514A (2010), as implemented by the regulations at 29 C.F.R. Part 1980 (2021).

the Board issued an Order to Show Cause directing the Complainant to show cause why the Board should not dismiss his case for failing to timely file an opening brief. The Complainant filed a response but failed to address why he did not timely follow the Board's briefing schedule. Accordingly, the Board issued an Order Dismissing Complaint on March 31, 2022.

On May 6, 2022, Complainant filed a Motion to Reconsider Order Dismissing Complaint. On May 19, 2022, Respondent filed a Response in Opposition to the Motion for Reconsideration. A party may move the ARB to reconsider its decision upon the filing of a motion for reconsideration within a "reasonable time" of the date on which the Board issued decision.² In applying this timeliness requirement, the Board has presumed a motion for reconsideration is timely when the motion was filed within a short time after the decision.³ The Board has also "granted reconsideration where a petition, though filed after a longer period, raised [Federal Rule of Civil Procedure] Rule 60(b)-type grounds or showed 'good cause' for the delay."⁴ The Board has found that a "short period" is twelve days or less.⁵ In comparison and by way of example, the Board has determined that motions for reconsideration filed thirty-four days, sixty days, and four months after the Board's decision were not timely.⁶

The Board issued its decision in this case on March 31, 2022, but Complainant did not submit its Motion to Reconsider until May 6, 2022. Thus, Complainant's motion was submitted 36 days after the Board's decision and was not filed within a "short time." Complainant has not raised any Rule 60(b)-type grounds for reconsideration, and has not shown good cause for his delay in filing his request for reconsideration.

Even if Complainant's request for reconsideration had been timely, we would nevertheless deny reconsideration. We will reconsider our decisions under limited

² *Henrich v. Ecolab, Inc.*, ARB No. 2005-0030, ALJ No. 2004-SOX-00051, slip op. at 11 (ARB May 30, 2007).

³ *Id.* at 15.

⁴ *Id.*

⁵ *Id.* at 12 n.27.

⁶ *Id.* at 17 (60 days); *Powers v. Paper, Allied-Indus. Chem. & Energy Workers Int'l Union*, ARB No. 2004-0111, ALJ No. 2004-AIR-00019, slip op. at 4-5 (ARB Dec. 21, 2007) (thirty-four days); *Williams v. United Airlines, Inc.*, ARB No. 2008-0063, ALJ No. 2008-AIR-00003, slip op. at 2 (ARB June 23, 2010) (four months).

circumstances, which include: (i) material differences in fact or law of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the court's decision, (iii) a change in the law after the court's decision, or (iv) failure to consider material facts presented to the court before its decision.⁷ Complainant's request failed to satisfy this standard. Accordingly, Complainant's Motion to Reconsider Order Dismissing Complaint is **DENIED**.

SO ORDERED.⁸

⁷ *Rosenfeld v. Cox Enters., Inc.*, ARB No. 2016-0026, ALJ No. 2014-SOX-00033, slip op. at 2-3 (ARB May 26, 2017).

⁸ In any appeal of this Order Denying Reconsideration that may be filed, we note that the appropriately named party is the Secretary, Department of Labor (not the Administrative Review Board).