United States Court of Appeals
For the Eighth Circuit

No. 20-3402

Jack R. T. Jordan

Petitioner

v.

U.S. Department of Labor

Respondent

Dyncorp International, L.L.C.

Interested party - Intervenor

No. 20-3404

Jack R. T. Jordan

Petitioner

v.

U.S. Department of Labor

Respondent

Dyncorp International, L.L.C.

Interested party - Intervenor

App. 2

Petition for Review of an Order of the
Department of Labor (except OSHA)

Submitted: November 2, 2021
Filed: November 5, 2021
[Unpublished]

Before LOKEN, GRUENDER, and ERICKSON, Circuit Judges.

PER CURIAM.

In these consolidated cases, Jack Jordan petitions for review of final orders from the United States Department of Labor Administrative Review Board (ARB). After careful review, we conclude the ARB's decisions were not arbitrary, capricious, an abuse of discretion, contrary to the law, or unsupported by substantial evidence in the record. See 49 U.S.C. § 31105(d) (appellate court reviews ARB's decision pursuant to Administrative Procedure Act); 5 U.S.C. § 706(2) (reviewing court shall hold unlawful and set aside agency decision found to be arbitrary, capricious, abuse of discretion, or otherwise not in accordance with law, or if unsupported by substantial evidence in record). Accordingly, we deny Jordan's petition in each case. See 8th Cir. R. 47B.

U.S. Department of Labor

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

[SEAL]

In the Matter of:

JACK JORDAN

COMPLAINANT,

v.

DYNCORP INTERNATIONAL, LLC, et al.

RESPONDENTS.

ARB CASE NO. 2019-0027

ALJ CASE NO. 2017-SOX-00055

DATE: September 16, 2020

Appearances:

For the Complainant:
Jack Jordan; *pro se;* Parkville, Missouri

For the Respondents DynCorp International LLC:
Edward T. Ellis, Esq.; Alexa J. Laborda Nelson, Esq.; *Littler Mendelson, P.C.*; Philadelphia, Pennsylvania

For the Solicitor of Labor, Amicus Curiae:
***Kate* S. O'Scannlain, Esq.; Jennifer S. Brand, Esq.; Megan E. Guenther, Esq.; Shelley E. Trautman, Esq.; *U.S. Department of Labor*, Washington, District of Columbia**

BEFORE: James D. McGinley, *Chief Administrative Appeals*, Thomas H. Burrell and Heather C. Leslie, *Administrative Appeals Judges*

DECISION AND ORDER

PER CURIAM. The Complainant, Jack Jordan, filed a retaliation complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act,[1] and its implementing regulations.[2]

Complainant alleged that DynCorp International (DynCorp) and its attorneys violated his rights under SOX by seeking a protective order on the grounds of privilege concerning two emails in an unrelated case, while Administrative Law Judges Almanza and Merck (the Respondent Judges) violated his rights by declining to order the release of the contents of the two emails in previous decisions. OSHA determined that the Respondent Judges were not covered parties under SOX, and the allegations appear to be duplicative of issues that have been raised or are pending in another claim. Thus, the Administrator dismissed the complaint. Complainant objected and the case was referred to the Office of Administrative Law Judges (OALJ) at Complainant's request. The Administrative Law Judge (ALJ) granted the Respondents' motions to dismiss based on Complainant's failure to state a claim and specifically notes that Complainant has not alleged any adverse action by any respondent that discriminates against him "in the terms and conditions of

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[1] 18 U.S.C. § 1514A (2010) (SOX).

[2] 29 C.F.R. Part 1980 (2019).

employment." In addition, the ALJ found that the Respondent Judges in this case are entitled to absolute immunity from suit and liability for their judicial acts. Complainant filed a petition for review of this decision with the Administrative Review Board (ARB) which was not accepted.

The ALJ also issued an Order Imposing Sanctions and Attorneys' Fees (April 9, 2018). The ALJ found that sanctions were necessary and thus admonished Complainant against making legal contentions that are unwarranted by either existing law or by an argument for extending, modifying, or reversing existing law or for establishing new law.[3] In addition, the ALJ ordered Complainant to pay to Respondent DynCorp the sum of $1,000.00, as reasonable attorneys' fees. The ALJ denied Complainant's motion for reconsideration. Complainant filed a petition requesting that the Administrative Review Board (ARB) review the ALJ's order and the denial of reconsideration. We granted that petition and now affirm.[4]

The Secretary of Labor has delegated authority to the Administrative Review Board to issue agency

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[3] 29 C.F.R. § 18.35(b)(2).

[4] By Order dated January 29, 2019, the Board consolidated this appeal with Complainant's subsequent appeal, ARB No. 18-0035, for purposes of rendering a decision. We have determined that judicial efficiency would be better served by separating the appeals and issuing individual decisions. Thus, this decision will only address the appeal ARB No. 19-0027.

decisions under the SOX.[5] The ARB reviews the ALJ's factual findings for substantial evidence, and conclusions of law de novo.[6] In considering a dismissal for failure to state a claim, the ARB must accept the non-moving party's factual allegations as true and draw all reasonable inferences in the non-moving party's favor.[7]

Upon review of the ALJ's Order Imposing Sanctions and Attorney's Fees and the Decision and Order Declining to Reconsider Imposition of Sanctions and Attorney's Fees, and the parties' arguments, we conclude that the ALJ's decision is in accordance with the law and is well-reasoned. As a result, we **ADOPT** and **ATTACH** the ALJ's decisions.[8]

Accordingly, the ALJ's Order imposing sanctions and awarding Respondent an attorney's fee to be paid by Complainant is **AFFIRMED**.

SO ORDERED.

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[5] 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. 13,186 (Mar. 6, 2020); see 29 C.F.R. § 1980.110(a).

[6] 629 C.F.R. § 1980.110(b). *Gunther v. Deltek, Inc.*, ARB Nos. 2013-0068, -0069, ALJ No. 2010-SOX-00049, slip op. at 2 (ARB Nov. 26, 2014).

[7] *Tyndall v. U.S. EPA*, ARB No. 1996-0195, ALJ Nos. 1993-CAA-00006, 1995-CAA-00005, slip op. at 2 (ARB June 14, 1996).

[8] *Jordan v. DynCorp. Int'l LLC*, ALJ No. 2017-SOX-00055 (ALJ Apr. 9, 2018) and *Jordan v. DynCorp. Int'l LLC*, ALJ No. 2017-SOX-00055 (ALJ Jan. 3, 2019).

U.S. Department of Labor

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

[SEAL]

In the Matter of:

JACK JORDAN

COMPLAINANT,

v.

DYNCORP INTERNATIONAL LLC, JASON BRANCIFORTE, ETHAN BALSAM and MICHAEL CANNON

RESPONDENTS.

ARB CASE NO. 2018-0035

ALJ CASE NO. 2016-SOX-00042

DATE: September 16, 2020

Appearances:

For the Complainant:
Jack Jordan; *pro se;* Parkville, Missouri

For the Respondents Jason Branciforte and Ethan Balsam:
Pamela Bresnahan, Esq.; Samuel J. Mott, Esq; *Vorys, Sater, Seymour and Pease LLP;* Washington, District of Columbia

For the Respondents DynCorp International LLC and Michael Cannon:
Edward T. Ellis, Esq.; Alexa J. Laborda

Nelson, Esq.; ***Littler Mendelson, P.C.;***
Philadelphia, Pennsylvania

BEFORE: James D. McGinley, ***Chief Administrative Appeals*****, Thomas H. Burrell and Heather C. Leslie,** ***Administrative Appeals Judges***

DECISION AND ORDER

PER CURIAM. The Complainant, Jack Jordan, filed a retaliation complaint with OSHA under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act,[1] and its implementing regulations.[2]

OSHA concluded that there was no reasonable cause to believe the Respondents had retaliated against Complainant in violation of SOX. Complainant objected and the case was referred to the Office of Administrative Law Judges (OALJ) at Complainant's request. The Administrative Law Judge (ALJ) granted the Respondents' motions to dismiss based on Complainant's failure to provide any definite information regarding the complaint, including identifying the required elements under the act. Complainant filed a petition requesting that the Administrative Review Board (ARB) review the ALJ's order. We granted that petition and now affirm.[3]

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[1] 18 U.S.C. § 1514A (2010) (SOX).

[2] 29 C.F.R. Part 1980 (2019).

[3] By Order dated January 29, 2019, the Board consolidated this appeal with Complainant's subsequent appeal, ARB No. 19-0027, for purposes of rendering a decision. We have determined

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the Administrative Review Board to issue agency decisions under the SOX.[4] The ARB reviews the ALJ's factual findings for substantial evidence, and conclusions of law de novo.[5] In considering a dismissal for failure to state a claim, the ARB must accept the non-moving party's factual allegations as true and draw all reasonable inferences in the non-moving party's favor.[6]

DISCUSSION

In a proceeding under the Act a party "may move to dismiss part or all of the matter for reasons recognized under controlling law, such as lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted, or untimeliness."[7] In administrative whistleblower proceedings before the Department of Labor, a sufficient statement of the claims need only provide some facts about the protected activity

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that judicial efficiency would be better served by separating the appeals and issuing individual decisions. Thus, this decision will only address the appeal ARB No. 18-0035.

[4] 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. 13,186 (Mar. 6, 2020); see 29 C.F.R. § 1980.110(a).

[5] 29 C.F.R. § 1980.110(b). *Gunther v. Deltek, Inc.*, ARB Nos. 2013-0068, -0069; ALJ No. 2010-SOX-00049, slip op. at 2 (ARB Nov. 26, 2014).

[6] *Tyndall v. U.S. EPA*, ARB No. 1996-0195, ALJ Nos. 1993-CAA-00006, 1995-CAA-00005; slip op. at 2 (ARB June 14, 1996).

[7] 29 C.F.R. § 18.70(c).

showing some "relatedness" to the laws and regulations of one of the statutes in our jurisdiction, some facts about the adverse employment action, a general assertion of causation, and a description of the relief that is sought.[8]

The record supports the ALJ's decision to dismiss Jordan's SOX case. In his extensive decision, the ALJ thoroughly reviewed and rejected Complainant's contentions noting that they do not address the required elements of a claim under SOX. In addition, the ALJ provided a very thorough analysis as to why he should not be disqualified from issuing a decision in this case. On appeal, Jordan has failed to present any argument that compels us to reverse the ALJ's ruling.[9] The ALJ thoroughly explained his factual and legal findings, and we incorporate them into this decision.

CONCLUSION

The ALJ's determination that Complainant failed to give fair notice of his complaint to Respondents and that it was not necessary to disqualify himself from the

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[8] *See Gallas v. Medical Center of Aurora*, ARB No. 2016-0012, ALJ No. 2015-SOX-00013 (ARB April 29, 2017); *Evans v. EPA*, ARB No. 2008-0059, ALJ No. 2008-CAA-00003, at 23 (ARB July 31, 2012).

[9] Moreover, we reject Complainant's Motion Regarding the Emails (March 29, 2018). As we affirm the ALJ's finding that Complainant failed to state a claim, we will not address an issue of discovery in this appeal.

case is correct. Accordingly, we **AFFIRM** the ALJ's decision and **DISMISS** Jordan's complaint.

SO ORDERED.

U.S. Department of Labor Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)

[SEAL]

Issue Date: 09 April 2018

CASE No.: 2017-SOX-00055

In the Matter of:

JACK JORDAN,
Complainant,

v.

DYNCORP INTERNATIONAL, LLC., et al.[1]
Respondents.

ORDER IMPOSING SANCTIONS AND ATTORNEYS' FEES

This case arises under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002

[1] Complainant also identifies the following law firms, attorneys, and administrative law judges as respondents in his request for hearing: Littler Mendelson, P.C.; Ethan Balsam; Jason Branciforte; Edward T. Ellis; Vorys, Sater, Seymour, and Pease LLP; Pamela A. Bresnahan; Honorable Larry Merck; and Honorable Paul Almanza.

(hereinafter "the Act"), P.L. No. 107-204, as codified as 18 U.S.C. § 1514A, and implemented at 29 C.F.R. Part 1980. On February 15, 2018, I dismissed the complaint in this matter and ordered Complainant to show cause why his conduct has not violated 29 C.F.R. § 18.35(b). I also invited any respondent seeking reasonable attorney fees to file a fee petition with appropriate supporting documentation. I expressly retained jurisdiction over these matters in the decretal language of my Order.

On March 6, 2018, Complainant filed his response to my Order and offers several reasons that I should not impose sanctions or award fees in this case.[2] In

[2] On February 26, 2018, Complainant also sent a letter to the Chief Administrative Law Judge, Office of Administrative Law Judges, U.S. Department of Labor, in which Complainant alleged, inter alia, that the undersigned had "knowingly and willfully engaged in misconduct prejudicial to the effective and expeditious administration of the business of the U.S. Department of Labor OALJ" by using the term "spouse" to describe a person who was and may still be his spouse in my Order dismissing the Complaint. Complainant also alleges that said conduct violates the "ABA Model Code of Judicial Conduct." Complainant also protested that I allowed counsel for Respondent DynCorp International to make the same reference in filings without correction. Complainant avers that he gave me an opportunity to explain my word choice "repeatedly" but that I declined to do so. Complainant apparently informed me of this opportunity to explain my word choice in a series of electronic mailings that he sent to my official email account. I deleted the emails without reading them and issued an Administrative Order informing the Parties of the receipt of the emails and their deletion, and directed that no further electronic submissions were to be made by either Party. I have considered whether to recuse myself in light of Complainant's allegation of professional misconduct against me, but decline to

sum, Complainant asserts that sanctions are inappropriate because I have "failed to provide a rational explanation" for my previous Order, "obstructed the production of evidence and abused official notice," clearly erred in my analysis of the propriety of sanctions in this matter, and my Order to Show Cause was "clearly illegal."

On March 15, 2018, Respondent DynCorp International (hereinafter DI) filed a *Petition for Attorneys' Fees* and a *Reply to Complainant's Response to Second Order to Show Cause.* Respondent DI contends that sanctions are appropriate for the reasons stated in my Order dismissing the Complaint and further requests that the undersigned designate Complainant a vexatious litigant and prohibit him from filing another case under the Act against Respondent DI. Finally, counsel for Respondent DI also requests a sanction of $1,000.00 in attorneys' fees be imposed on Complainant. On March 22, 2018, Complainant filed an *Opposition to LM's March 15 Filings.*

BACKGROUND

As a threshold matter, I incorporate the findings of fact and conclusions of law in my order dated February 15, 2018. In the interest of clarity, I will now summarize the most relevant findings and conclusions. Complainant is an attorney licensed to practice in the

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do so. I have not acted in any manner that might tend to disqualify me in this manner or create any appearance of impropriety by my continued adjudication of this matter.

State of New York and is representing himself in this matter. The basis of his Complaint was, in sum, that the Respondent Attorneys and Respondent Judges had violated the Act on behalf of Respondent DI International by their actions during previous litigation. Because it appeared that Complainant was making a collateral attack upon the actions of opposing counsel and the adverse rulings of the presiding judges in ongoing litigation through the initiation of new litigation rather than through direct or interlocutory appeal, I ordered Complainant to show cause as to why the instant complaint should not be dismissed for failure to state a claim on which relief may be granted. I also ordered Complainant to include in his response to this order any supporting papers such as affidavits, declarations, or other proof necessary to establish any particular facts not already in evidence in the previous cases that tend to support the collusion and culpable agency by respondents that has been alleged.

In his untimely response, Complainant asserted that the undersigned was without authority to issue a show cause order under these circumstances, and, that by doing so, was displaying "bias" and discriminating against him in violation of the Act and the Administrative Procedure Act. See Complainant's Response at 9, 11, 15, and 25-29. Notwithstanding specific direction in the Show Cause Order, Complainant did not include in his Response any supporting papers such as affidavits, declarations, or other proof necessary to establish any particular facts not already in evidence in the previous

litigation that tended to support the collusion and culpable agency by Respondents that had been alleged.

I was not persuaded by Complainant's assertions and dismissed the Complaint. In most relevant part, I concluded that the Respondent Judges were absolutely immune from suit based upon long-standing precedent not addressed by Complainant, and the Act does not empower an aggrieved complainant to mount a collateral attack upon actions of opposing counsel and the adverse rulings of a presiding judge during ongoing litigation through the initiation of new litigation rather than through direct or interlocutory appeal as provided by law and regulation.

DISCUSSION

The first question for resolution is whether Complainant's conduct in this matter has violated 29 C.F.R. § 18.35(b), which states as follows, in relevant part:

> By presenting to the judge a written motion or other paper—whether by signing, filing, submitting, or later advocating it—the representative or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> > (1) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceedings;

> (2) The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law[.]

29 C.F.R. § 18.35(b). Moreover, I "may order a representative, law firm, or party to show cause why conduct specifically described in the order has not violated paragraph (b) of this section." *Id.* § 18.35(c)(3). If I impose a sanction, I must describe the sanctioned conduct and explain the basis for the sanction. *Id.* § 18.35(c)(5).

As noted above, Complainant first asserts that I have failed to provide a "rational explanation" for my Order to show cause. I disagree. I explained that Respondent DI has alleged that the Complaint in this matter is frivolous. I explained that administrative law judges have long been held to be absolutely immune from suit consistent with the principles governing immunity for other judges, at least for the last 40 years since the United States Supreme Court issued its decision on the issue in *Butz v. Economou*, 438 U.S. 480, 511-13 (1978). To the extent that Complainant put forth an argument that Respondent Judges "were acting entirely outside their roles as ALJs" by denying him access to certain evidence at issue, and should therefore be subject to suit and damages, I explained that Complainant's position has been unsupported by legal precedent concerning judicial immunity at least since 1871. I explained that advocacy efforts by counsel concerning the discoverability of certain pieces of electronic mail and the decisions made by judges

consequent to those efforts may have an adverse effect upon Complainant's litigation posture in a particular case, but they do not, without more, constitute discriminatory conduct against Complainant "in the terms and conditions of employment." I reminded Complainant that at least one court had rejected his personal arguments on this point in the recent past. *Cf. Jordan v. Sprint Nextel Corporation*, 3 F. Supp. 3d 917, 931-32 (D. Kan. 2014) (dismissing SOX appeal filed by Complainant because statements by Sprint's counsel to the SEC were not adverse employment actions). I also explained that, as an attorney, Complainant has an obligation to put forth only those "claims and other legal contentions that are either warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." 29 C.F.R. § 18.35(b)(2). I also noted that the serial nature of the litigation under consideration, in which "offending" counsel and judges in each case are simply added to the caption of the next lawsuit, is evidence that Complainant is filing complaints merely to harass counsel and judges who rule against him and needlessly increase the cost of the proceedings. In terms of quantity, I made 14 conclusions of law explaining the basis for my Order. As such, Complainant's assertion that the Order was not explained is groundless.

Complainant further asserts that I have "obstructed the production of evidence and abused official notice" by dismissing the Complaint and issuing the Show Cause Order. *Complainant's Response to Second Show Cause Order*, at 3. As a threshold matter, I note

that this assertion is not strictly responsive to the question posed in my Order, namely, whether Complainant should be sanctioned. That being noted, Complainant seems to assert that by dismissing the Complaint because it fails, as a matter of law, to state a complaint on which relief may be granted, I have improperly denied him the opportunity to conduct discovery and engage in further litigation concerning certain evidence denied him in the two previous adjudications. Specifically, Complainant faults the undersigned for declining to resolve an evidentiary matter before dismissing the complaint. But his argument proves too much: carried to its logical conclusion, application of his argument would mean that no judge could ever dismiss a complaint before discovery had been completed and all prehearing motions resolved. In making this argument, Complainant has assumed that his complaint is not frivolous, but the issue being resolved is, among others, whether his complaint was frivolous *ab initio*. Complainant has not cited or otherwise argued in reliance on any authority for the notion that there is a generic "right" to conduct discovery notwithstanding, for example, a failure to state a claim upon which relief can be granted or a lack subject-matter jurisdiction. As such, his assertion that I improperly obstructed the production of evidence by dismissing the Complaint is without merit.

Complainant also argues that official notice of certain facts was inappropriate under the circumstances of this case. On my own motion, I may take official notice "of any adjudicative fact or other matter subject to

judicial notice." 29 C.F.R. 18.84. In my Order dismissing the Complaint, I took notice of 12 facts that can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. I allowed any party to file evidence or other documentation to show the contrary of any matter noticed within 14 days of the date of issuance of my Order dismissing the Complaint, but no objection or contrary evidence was properly filed during that interval. The noticed facts included the identity and employers of the judges and counsel of record in the 2 previous lawsuits filed by Complainant. This information is publicly available from the website of the Office of Administrative Law Judges at https://www.oalj.dol.gov/. I also noticed that Complainant is an attorney licensed to practice in the State of New York and is representing himself in this matter. I also noticed that Complainant timely filed his request for hearing in this matter, but filed his reply to my original Order to Show Cause 23 days after the date of issuance of the order.

Complainant "especially objects" that I also took official notice of the fact that both Respondent Judges have made rulings in their capacities as presiding judges in their respective cases regulating the conduct of discovery and have denied Complainant access to certain emails at issue. In response to this notice, Complainant vigorously contests that either judge actually made any rulings in their respective cases:

> In this case, the statements and contentions by ALJs Merck and Almanza in different cases are merely statements and contentions.

> They are not rulings, and they cannot have any legal effect as rulings. They are not precedent, nor do the doctrines of collateral estoppel or *res judicata* apply.

Complainant's Response to Second Show Cause Order, at 5. Regardless of the jurisprudential validity or lack thereof in Complainant's assertions, I would simply note that I did not take notice of the substance of these judicial "actions"—whatever one decides to call them—except to the extent that I noted that they were adverse to the Complainant, and I did not take notice or make any conclusion as to their underlying legal validity.[3] In any event, Complainant has not filed any evidence or other documentation to show the contrary of any matter noticed. As such, Complainant's untimely objection is overruled.

Complainant finally argues that I am "clearly (and deliberately) abusing threats of sanctions to intimidate and harass a complainant." *Complainant's Response to Second Show Cause Order*, at 7. Complainant then makes a series of assertions in support of this allegation: only Respondents can seek sanctions; it is inappropriate to pursue sanctions after a case has been dismissed; I erred in dismissing the Complaint; and I lack jurisdiction to adjudicate the imposition of sanctions. Complainant asserts that he had identified "controlling and dispositive" language in the Act, its implementing regulations, and applicable precedent.

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[3] Indeed, if these judicial "actions" were not adverse to Complainant, it would be unclear as to why complainant would have added them as Party-Opponents to this Complaint.

He also reiterates his complaint of "egregious misconduct" in the previous (and instant) litigation. I disagree.

- Complainant has not identified any statutory or regulatory provision relating to the Act that would operate to limit my authority to investigate and determine whether the instant Complaint was frivolous or filed in bad faith, and to impose sanctions, if appropriate. *Cf.* 29 C.F.R. § 18.35(c)(3) (authorizing judge to order cause be shown why complaint is not frivolous or brought in bad faith). Moreover, Respondent DI referred to the frivolous nature of the Complaint in its response to the original Order to Show Cause, and has requested sanctions against Complainant in its *Reply of DynCorp International LLC to Complainant Jack Jordan's Response to Second Order to Show Cause*, at 1. This satisfies the apparent requirement in 29 C.F.R. § 1980.109(d)(2) that a respondent request a finding and award.

- Complainant's contention that sanctions after dismissal are inappropriate fails to consider the instant situation in which the reason that the Complaint was dismissed was ultimately because it was frivolous or filed in bad faith or both. To impose sanctions before dismissal is required by neither law nor logic. And none of the putative authority cited restricts the ability of the undersigned to adjudicate the issue of sanctions, especially since I expressly retained the jurisdiction to do so in my Order dismissing the Complaint.

- Complainant's argument that I should not impose sanctions because my underlying decision to dismiss the Complaint was in error is the functional equivalent of a request that I reconsider my earlier decision. I decline to do so.
- Complainant's jurisdictional argument similarly lacks any authority, in that the Administrative Review Board has neither accepted the case for review nor issued a stay to the undersigned in connection with the matters still pending.

Having considered all matters submitted by the Parties on this issue, I make the following **Findings of Fact** in relation to the issue under consideration:

1. Complainant named the Respondent Judges in the instant Complaint under the Act based upon actions they took in the performance of their official duties as administrative law judges, notwithstanding the fact that administrative law judges have been immune from suit for actions taken in the performance of their duties since 1978.
2. When given an opportunity to provide a nonfrivolous argument for extending, modifying, or reversing existing law concerning judicial immunity or for establishing new law in response to the first Show Cause Order in this matter, Complainant did not do so. Complainant's filings do not expressly address the issue of judicial immunity.
3. Complainant named the Respondent Attorneys in the instant Complaint under the Act based upon actions they took as counsel for Respondent DI in

previous litigation, notwithstanding the absence of support for counsel liability under these circumstances in the text of the Act or implementing regulations.

4. When given an opportunity to provide a nonfrivolous argument for extending, modifying, or reversing existing law concerning counsel as covered persons under the Act or for establishing new law in response to the first Show Cause Order in this matter, Complainant did not do so.

5. Complainant is an active attorney in good standing in the state of New York who is representing himself in this matter.

6. Complainant was last employed by Respondent DI in 2012, but does not allege in the instant Complaint any retaliatory discrimination or adverse employment action arising from that term of employment.

In light of these facts, I have reached the following **Conclusions of Law**:

1. By filing the instant complaint and his response to the Order to Show Cause, Complainant has certified that to the best of his knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that the following points *inter alia* are true:

    1.1. The legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; and

1.2. The filing is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceedings.

29 C.F.R. § 18.35(b).

2. Complainant's legal contentions are not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law. A reasonable attorney in like circumstances could not have believed his actions to be legally justified, especially concerning the liability of judges and opposing counsel to suit for litigation-related actions, and I conclude that the Complaint is therefore frivolous.

3. The serial, aggregative nature of the litigation at issue provides substantial evidence that Complainant filed this action merely to harass counsel and judges who have ruled or worked against him during litigation and to needlessly increase the cost of the proceedings. That being noted, the nature of Complainant's submissions, the reasoning displayed therein, and his characterizations of the actions of judges and opposing counsel lead me to conclude that the Complaint in this matter was not effected with the intent to deceive that is characteristic of bad faith; to the contrary, I conclude that Complainant actually believes his mistaken interpretations of law to be correct, even when binding precedent to the contrary is offered for his consideration.

SANCTIONS

In that I have concluded that this Complaint was frivolous in violation of § 18.35(b), I must now determine whether sanctions are appropriate under the provisions of § 18.35(c)(4) and, if applicable, 29 C.F.R. § 1980.109(d)(2). The nature of the Respondents in this matter weighs heavily in this analysis. At best, Complainant frivolously targeted two judges who have ruled against him in other litigation—with no hope of obtaining punitive damages from either due to the limited remedies available under the Act—in a quixotic effort to challenge their decisions outside of the normal appeals process. In response, I would observe that there is great public interest in having impartial judges who are "at liberty to exercise their functions with independence and without fear of consequences," especially in the form of law suits from disgruntled litigants. *See Pierson v. Ray,* 386 U.S. 547, 554 (1967) (citations omitted). This is particularly true when considering the situation of administrative law judges, who do not have the tenure protections afforded judges appointed under Article III of the Constitution, and may have to procure their own representation against such suits.[4] In a similar vein, the integrity of the

[4] Counsel for the Solicitor intervened in this matter to defend the decision below rather than to represent the two Respondent Judges. I conditioned their intervention on provision of the departmental position concerning judicial immunity for the Respondent Judges. In the document styled *Solicitor of Labor's Reply to Response to Order to Show Cause*, filed on January 5, 2018, counsel felt it necessary to include as footnote one the following: "The Solicitor does not represent ALJs Merck or Almanza

adjudicative process is strengthened when counsel may zealously and competently defend a client's interest in court without being distracted by the possibility of being individually sued outside of the ordinary appellate process. Another factor that must be considered was well described by counsel for Respondent DI in the *Reply to Complainant's Response to Second Order to Show Cause:* "[Complainant's] response to the Order to Show Cause offers no defense for his action, but rather attacks ALJ Barto just as he has previously attacked ALJs who were handling other cases he had brought." Instead of using the "safe harbor" period afforded by each of my Orders to reflect upon his actions and reconsider the nature of his filings, Complainant instead "accuses ALJ Barto of bias, corruption, and criminal acts." *Reply*, at 1. Sanctions appear to be necessary in order to bring the message home to Complainant that frivolous complaints such as this one—his third suit mounting collateral attacks on opposing counsel—have no place in the practice of law.[5]

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in their individual capacities but provides this response to answer the questions posed in the Court's November 2, 2017 order." Whatever the reasoning behind this approach, it does not serve the public interest in having judges free from distraction and expense stemming from frivolous law suits.

[5] In the absence of any formal argument from Complainant on the subject of sanctions, I will consider the following in extenuation and mitigation: the apparent absence of any evidence of other misconduct; his apparent good standing with his licensing authority; and his zealous pursuit of what he perceives as corruption within the industries regulated by the Act.

ORDER

1. For the reasons stated above, Complainant is hereby **ADMONISHED** against making legal contentions that are unwarranted by either existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law, in violation of 29 C.F.R. § 18.35(b)(2).

2. Within 21 days of the date of issuance of this Order, Complainant will **PAY** to Respondent DI the sum of $1,000.00, as reasonable attorneys' fees, based upon the credible and sufficient description of completed legal work in excess of $1,000.00 provided in the Declaration of Edward T. Ellis in Support of Respondent DI's Petition for Attorneys' Fees, and as authorized by 29 C.F.R. § 1980.109(d)(2).

SO ORDERED.

WILLIAM T. BARTO
Administrative Law Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 20-3402

Jack R. T. Jordan

Petitioner

v.

U.S. Department of Labor

Respondent

Dyncorp International, L.L.C.

Intervenor

No. 20-3404

Jack R. T. Jordan

Petitioner

v.

U.S. Department of Labor

Respondent

Dyncorp International, L.L.C.

Intervenor

Petitions for Review of an Order of the
Department of Labor (except OSHA)
(2018-0035)
(2016-SOX-00042)
(2019-0027)
(2017-SOX-00055)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

January 10, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans