



In the Matter of:

JOHN SWINT,

ARB CASE NO. 17-012

COMPLAINANT,

**ALJ CASE NOS. 2014-AIR-021
2016-AIR-011**

v.

DATE: February 8, 2017

NETJETS AVIATION, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

John J. Swint, *pro se*, Fremont, Ohio

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; E. Cooper Brown, *Administrative Appeals Judge*; and Tanya L. Goldman, *Administrative Appeals Judge*

ORDER DISMISSING APPEAL

Complainant John Swint filed a petition requesting the Administrative Review Board to review a decision and order of a Department of Labor Administrative Law Judge (ALJ) issued on November 29, 2016, under the whistleblower protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.¹ The ALJ's decision granted a

¹ 49 U.S.C.A. § 42121 (Thomson/West 2007) (AIR-21). AIR-21's implementing regulations are found at 29 C.F.R. Part 1979 (2016).

Motion to Dismiss, filed by Respondent NetJets on twelve of Swint's claims, but denied summary decision on two of Swint's claims and scheduled a hearing on these two claims only.² The ALJ's decision included a Notice of Appeal Rights.³

The Secretary of Labor has delegated authority to issue final agency decisions in cases arising under AIR-21 to the Board.⁴ This authority also includes the consideration and disposition of interlocutory appeals, "in exceptional circumstances, provided such review is not prohibited by statute."⁵

Because the ALJ has not fully and finally disposed of consolidated ALJ case nos. 2014-AIR-021 and 2016-AIR-011, it could be argued that Swint's petition is for interlocutory review (i.e., review of a non-final decision). But although the Board may accept interlocutory appeals in "exceptional" circumstances, it is not the Board's general practice to accept petitions for review of non-final dispositions issued by an ALJ.

The ARB understands that because the ALJ provided a notice of appeal rights, it was prudent of Swint to file a petition for review. Nevertheless, it is incumbent upon Swint to demonstrate why the Board should depart from its usual practice and accept his interlocutory appeal. Accordingly, the Board ordered Swint to show cause no later than January 18, 2017, why the Board should not dismiss his appeal as interlocutory. We cautioned Swint that "Failure to timely respond to this Order may result in dismissal of the appeal without further order."⁶

² *Swint v. NetJets Aviation, Inc.*, Nos. 2014-AIR-021, 2016-AIR-011 (ALJ Nov. 29, 2016)(D. & O.).

³ *Id.* at 13-14.

⁴ Secretary's Order No. 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,379, § 5(c)(50) (Nov. 16, 2012).

⁵ *Id.* at 5(c)(66).

⁶ *Accord Edmonds v. TVA*, ARB No. 05-02, ALJ No. 2004-CAA-015, slip op. at 3 (ARB July 22, 2005).

Swint did not file a response to the Board's Show Cause Order. Accordingly, he has failed to carry his burden of demonstrating why the Board should accept his interlocutory appeal. Accordingly, we **DISMISS** his appeal.⁷

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Administrative Appeals Judge

TANYA L. GOLDMAN
Administrative Appeals Judge

⁷ Should Swint continue to be dissatisfied with the ALJ's rulings on his consolidated complaints once the ALJ fully resolves the case before him, he may timely petition the Board to review all decisions with which he is dissatisfied.