

U.S. Department of Labor

Administrative Review Board  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210



*Tolson*

In the Matter of:

DWIGHT BOHANON,  
  
COMPLAINANT,

ARB CASE NO. 16-048

ALJ CASE NO. 2014-FRS-003

v.

DATE: MAY 18 2016

GRAND TRUNK WESTERN  
RAILROAD CO.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

*For the Complainant:*

Robert B. Thompson, Esq.; *Harrington, Thompson, Acker & Harrington, Ltd.*;  
Chicago, Illinois

*For the Respondents:*

Susan K. Fitzke and Jessica J. Bradley, Esq.; *Little Mendelson, PC*; Minneapolis,  
Minnesota

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Luis A. Corchado,  
*Administrative Appeals Judge*; and Anuj Desai, *Administrative Appeals Judge*. Judge  
Corchado concurs.

### ORDER DENYING MOTION FOR RECONSIDERATION

On April 27, 2016, the Administrative Review Board issued a Final Decision and Order Denying Motion to File Petition for Review, after Time for the Filing Has Expired in this case. On May 6, 2016, Respondent filed a Motion for Reconsideration.

The Board has identified four non-exclusive grounds for reconsidering a final decision and order. The grounds for reconsideration include, but are not limited to, whether the movant has demonstrated:

2016 MAY 18 10 00 AM  
U.S. DEPARTMENT OF LABOR  
WASHINGTON, D.C.

(i) material differences in fact or law from that presented to [the Board] of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the [Board's] decision, (iii) a change in the law after the [Board's] decision, and (iv) failure to consider material facts presented to the [Board] before its decision.<sup>[1]</sup>

Respondent relies on the fact that the parties wish to settle their case as grounds for requesting reconsideration of the Board's decision citing grounds (i) and (iv) listed above. But this fact is neither a material difference in fact or law from that presented to the Board, nor did the Board fail to consider this fact presented to the Board before its decision. As the Board stated in its decision,

The Joint Motion [for Approval of Settlement and Withdrawal of Complainant's Opposition to Motion for Additional Time to File Petition for Review] subsequently filed by the parties does not change our evaluation of Respondent's entitlement to tolling of the limitations period. The 14-day deadline is found in a duly promulgated regulation, and the standard for equitable modification of that deadline is "exceptional circumstances." The fact that both parties belatedly agreed to a late-filed petition does not constitute "exceptional circumstances"—it certainly does not satisfy any of the four circumstances the Board has consistently cited as circumstances supporting the tolling of the limitations period.<sup>[2]</sup>

---

<sup>1</sup> *OFCCP v. Fla. Hosp. of Orlando*, ARB No.11-011, ALJ No. 2009-OFC-002, slip op. at 4, n.4 (ARB July 22, 2013) (Order Granting Motion for Reconsideration and Vacating Final Decision and Order Issued Oct. 19, 2012) (citation omitted).

<sup>2</sup> *Bohannon v. Grand Trunk W. R.R. Co.*, ARB No. 16-048, ALJ No. 2014-FRS-003, slip op. at 4 (ARB Apr. 27, 2016).

Accordingly, Respondent's Motion for Reconsideration is respectfully **DENIED**.

**SO ORDERED.**

  
\_\_\_\_\_  
**PAUL M. IGASAKI**  
Chief Administrative Appeals Judge

  
\_\_\_\_\_  
**ANUJ C. DESAI**  
Administrative Appeals Judge

**Judge Corchado concurring:**

I concur with the denial of the motion for reconsideration.

  
\_\_\_\_\_  
**LUIS A. CORCHADO**  
Administrative Appeals Judge