



In the Matter of:

MICHAEL B. BROWN,

ARB CASE NO. 2019-0007

COMPLAINANT,

ALJ CASE NO. 2015-SOX-00018

v.

DATE: June 19, 2019

SYNOVUS FINANCIAL CORPORATION,

RESPONDENT.

Appearances:

For the Complainant:

Michael B. Brown; *pro se*; Columbus, Georgia

For the Respondent:

Margaret H. Campbell, Esq. and Amy E. Jensen, Esq.; *Olgetree, Deakins, Nash, Smoak & Stewart, P.C.*; Atlanta, Georgia

Before: William T. Barto, *Chief Administrative Appeals Judge*; James A. Haynes and Daniel T. Gresh, *Administrative Appeals Judges*.

FINAL DECISION AND ORDER

This case arises under the whistleblower provision of the Sarbanes-Oxley Act of 2002 (SOX), 18 U.S.C. § 1514A (2010) and its implementing regulations at 29 C.F.R. Part 1980 (2015). Brown brought his original complaint (*Brown I*) against Synovus Financial Corporation in 2014. The Occupational Safety and Health Administration (OSHA) dismissed the complaint. Brown objected and requested a hearing. The Administrative Law Judge (ALJ) subsequently assigned to the case granted Synovus's motion for summary decision on December 16, 2016 and provided Brown notice of his right to timely appeal the ALJ's decision. The SOX's

whistleblower provision gives parties fourteen days to appeal an ALJ's decision. 29 C.F.R. 1980.110(a). On April 6, 2017, over three months after the ALJ's decision, Brown filed a motion with the Administrative Review Board (ARB or Board) to set aside the ALJ's decision for alleged "fraud on the Court." The ARB treated Brown's motion as a petition for review and denied it as untimely filed. *Brown v. Synovus Financial Corp.*, ARB No.17-037, ALJ No. 2015-SOX-018 (ARB May 17, 2017). After the ARB denied Brown's subsequent motion for reconsideration, Brown appealed the ARB's final decision to the United States Court of Appeals for the 11th Circuit, which affirmed the ARB's decision. *Brown v. Sec'y of Labor*, No. 17-13151, 739 Fed. Appx. 978 (11th Cir., July 11, 2018)(unpub.). The court also denied Brown's subsequent motion for reconsideration.

Following the court's denial, Brown filed a motion with the ALJ for relief under Fed. R. Civ. P. 60(d), again asserting fraud on the court (*Brown II*). On October 30, 2018, the ALJ denied his motion, concluding specifically that Brown alleged no new information or discovery of fraud but rather moved for relief based on facts and content already known to him in December 2016 when the matter was before the ALJ the first time. The ALJ found that Brown's motion for relief was an attempt to reargue his case which the ARB and the court of appeals had already denied.

Brown has now petitioned the ARB for review of the ALJ's decision.¹ Upon review of the ALJ's Order, we conclude that the ALJ's Order is well-reasoned and based on the undisputed facts and the applicable law. The ALJ properly concluded that the motion failed to allege proper grounds of fraud on the court. The ALJ correctly concluded that Brown seeks to relitigate his case in the form of a motion for relief. Accordingly, we adopt and attach the ALJ's Order Denying Motion to Relieve Party from Judgment, Order, or Proceeding to Set Aside the Order due to Fraud on the Court. Brown's Motion at issue is thereby **DENIED**.

SO ORDERED.

¹ The ARB has jurisdiction to review the ALJ's decision under Secretary's Order No. 01-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13,072 (Apr. 3, 2019) and 29 C.F.R. Part 1980.110. The ARB reviews the ALJ's factual determinations for substantial evidence and conclusions of law de novo. *Dietz v. Cypress Semiconductor Corp.*, ARB No. 15-017, ALJ No. 2014-SOX-002, slip op. at 6 (ARB Mar. 30, 2016); see 29 C.F.R. 1980.110(b).