



In the Matter of:

J. SCOTT BECHTEL,

ARB CASE NO. 06-010

COMPLAINANT,

ALJ CASE NO. 2005-SOX-033

v.

DATE: October 31, 2008

COMPETITIVE TECHNOLOGIES, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

**Jason M. Zuckerman, Esq., *Law Offices of Jason M. Zuckerman*, Washington,
District of Columbia**

For the Respondent:

**Mary E. Pivec, Esq., Julia H. Perkins, Esq., *Sheppard Mullin Richter &
Hampton, LLP*, Washington, District of Columbia**

**ORDER DENYING RECONSIDERATION
AND MOTION FOR CLARIFICATION**

J. Scott Bechtel filed a complaint under the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX), 18 U.S.C.A. § 1514A (West 2006). Bechtel alleged that Competitive Technologies, Incorporated (CTI), fired him in retaliation for, among other actions, his refusal to sign shareholder disclosure statements. A Department of Labor Administrative Law Judge (ALJ) concluded that CTI had not violated the SOX and dismissed Bechtel's complaint. Bechtel appealed to the Administrative Review Board (ARB), which remanded the case to the ALJ for further proceedings. *Bechtel v.*

Competitive Techs., Inc., ARB No. 06-010, ALJ No. 2005-SOX-033 (ARB Mar. 26, 2008).

On April 8, 2008, Bechtel filed a Motion for Reconsideration and Clarification of the ARB's decision. Because the parties had requested appointment of a settlement judge to facilitate resolution of this case, the ARB issued an Order on May 16, 2008, to stay its consideration of Bechtel's motion. 29 C.F.R. § 18.9 (2005). Subsequently, Bechtel re-filed his motion after settlement proceedings concluded, and CTI filed a response.¹

The ARB is authorized to reconsider a decision upon the filing of a motion for reconsideration within a reasonable time of the date on which the decision was issued. *Henrich v. Ecolab, Inc.*, ARB No. 05-030, ALJ No. 2004-SOX-051, slip op. at 11 (ARB May 30, 2007).

Moving for reconsideration of a final administrative decision is analogous to petitioning for panel rehearing under Rule 40 of the Federal Rules of Appellate Procedure. Rule 40 expressly requires that any petition for rehearing "state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended" Fed. R. App. P. 40(a)(2). In considering a motion for reconsideration, the Board has applied a four-part test to determine whether the movant has demonstrated:

- (i) material differences in fact or law from that presented to a court 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, and (iv) failure to consider material facts presented to the court before its decision.

Getman v. Southwest Secs., Inc., ARB No. 04-059, ALJ No. 2003-SOX-008, slip op. at 2 (ARB Mar. 7, 2006).

In his motion, Bechtel makes three arguments. First, he claims that the ARB disregarded "three critical grounds" for his appeal of the ALJ's dismissal of his complaint. Second, he contends that the ARB disregarded regulations and precedent in permitting CTI to file an untimely cross-appeal. Finally, he seeks clarification of the legal standards of proof articulated by the ARB in remanding this case for further proceedings.

¹ The ARB's Order to Stay Proceedings was issued on May 16, 2008. On August 20, 2008, the ARB received notice that settlement proceedings had concluded. On August 25, 2008, CTI filed a motion for an extension to time to file a response to Bechtel's reconsideration motion. The ARB granted CTI's motion on August 28, 2008, the same day that it received Bechtel's motion opposing CTI's extension motion and CTI's response to Bechtel's reconsideration motion. Accordingly, we deny Bechtel's motion to disregard CTI's response.

None of these arguments meets any of the provisions of the ARB's four-part test for reconsideration. Instead, Bechtel's first two arguments regarding grounds for his appeal and an impermissible cross-appeal are immaterial to the basis for the ARB's Order of Remand. Bechtel's request for clarification simply rehashes the arguments made in his initial brief on appeal, which the ARB rejected. *See* Complainant's Brief at 13-30.

Accordingly, we **DENY** Bechtel's motion.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

OLIVER TRANSUE
Administrative Appeals Judge