UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
COVINGTON DISTRICT OFFICE

Issue Date: 21 April 2026

In the Matter of:

GREGORY T. WOLTERS, Complainant, v. **GULFSTREAM AEROSPACE CORPORATION,** Respondent.	**CASE NO.:** 2023-AIR-00007 OSHA NO.: 301003127 **ANGELA F. DONALDSON** Administrative Law Judge

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DECISION

This matter arises under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR21" or "the Act"), 42 U.S.C. § 42121. On April 13, 2023, Complainant requested a hearing based upon the Secretary's findings, dated April 12, 2023, wherein the Secretary concluded that there was no reasonable cause to believe that a violation of the statute occurred.

Respondent Gulfstream Aerospace Corporation moves for summary decision on the grounds that Complainant Wolters claims of whistleblower retaliation are barred by the statute of limitations; Complainant did not engage in protected activity before Respondent's decision to remove him from Gulfstream projects; and Complainant was removed from Gulfstream projects solely due to Complainant's unprofessional behavior, and thus Respondent contends any purported adverse action was not retaliatory. Complainant's opposition was filed, Respondent was permitted to file a reply in support of the motion, and a hearing was held on this and other motions on September 5, 2025.

Respondent also moved to submit documents under seal, including Exhibits 4-9, 11-13, 15, 26, and 35, in light of the parties' protective order entered during discovery and approved by this tribunal, under which the parties agreed to guidelines regarding the designation of certain documents as "Confidential." The motion was not opposed. At the timing of the filings at issue, Respondent was advised of the procedure for submitting documents confidentially to this office, and the exhibits have been received and are maintained on this office's Confidential SharePoint site. Respondent similarly submitted its unredacted Memorandum of Law under seal, given references therein to exhibits or portions of exhibits marked "Confidential." The redacted version of the Memorandum was filed publicly.

When filing his Opposition to the Motion for Summary Decision, Complainant filed a motion asking for the tribunal's consideration whether his opposition to the motion and

supporting declarations/exhibits thereto "should remain sealed." Per Complainant, the following exhibits had been marked "Confidential" per the parties' protective order: Complainant's Exhibits B, C, D, F, G, H, G, H, I, W, KK, MM, NN, OOO, and EEE and Respondent's Exhibits 6, 11, and 26. Like Respondent, Complainant stated that he was filing his unredacted brief (in opposition to summary decision) under seal and filing the redacted versions of the documents publicly. He did, in fact, submit the "Confidential" documents under seal and redacted versions publicly. Respondent did not oppose the request.

This Order confirms that, for good cause shown, Respondent's request to file under seal Exhibits 4-9, 11-13, 15, 26, and 35 and the related unredacted Memorandum of Law (for Respondent's Motion for Summary Decision) has been **GRANTED**. 29 C.F.R. § 18.85(b). Complainant's request to file under seal Exhibits B, C, D, F, G, H, G, H, I, W, KK, MM, NN, OOO, and EEE and the related Opposition to Respondent's Motion for Summary Decision has also been **GRANTED**. *Id*.

I. Respondent's Motion for Summary Decision

Respondent presented a Statement of Undisputed Facts, numbered 1 through 49, concerning the nature of Gulfstream's business; Complainant's employment as an electrical engineer who performed consulting work, including on Gulfstream projects, between 2018 and 2021; Complainant's authority to perform certain delegated functions on Gulfstream aircraft as an Engineering Authorized Representative ("EAR"); an inspection process applicable to the manufacturing of new aircraft referred to as the "conformity inspection process" which involved inspections conducted by Gulfstream's Organization Designation Authorization ("ODA") that is deputized by the FAA to review and approve data on the FAA's behalf; Complainant's proposal of an alternate format for a Request for Conformity ("RFC") within that process and exchanges about the proposed format that followed, which involved references to the ODA Manual; Complainant's conduct in the days immediately following his proposed RFC format change; Respondent's decision to stop using Complainant as a consultant for Gulfstream projects; Respondent's communication to Complainant on September 17, 2021, that he would no longer be needed on future Gulfstream projects; and complaints that Complainant raised internally after September 17, 2021; Respondent's delivery of a letter to Complainant on August 16, 2022, informing him that his EAR authority was terminated, noting that he had not received assignments from Gulfstream since September 2021; and Complainant's submission of a complaint to the Occupational Safety and Health Administration ("OSHA") on August 19, 2022. Motion, pp. 4-21. Respondent submitted 36 exhibits, some of which were filed under seal (Exs. 4-9, 11-13, 15, 26, 35).

Regarding timeliness, Respondent argues that the statute of limitations begins to run when the complainant *discovers* the allegedly discriminatory decision, not the effective date of the discriminatory act such as the official termination date, citing *Chardon v. Fernandez*, 454 U.S. 6, 8 (1981), *Del. State Coll. v. Ricks*, 449 U.S. 250, 259 (1980), and ARB precedent. Motion, pp. 22-23. Respondent submits that Complainant knew as of September 17, 2021, that Gulfstream had decided to terminate his consulting services. Respondent cites Complainant's email of September 17, 2021 (Ex. 33), his Human Resources complaint of the same day (Ex. 25),

and his statements to the FAA (Ex. 22, 24). Respondent asserts that the OSHA complaint filed August 19, 2022, was far outside the 90-day filing timeframe.

Regarding the element of protected activity, Respondent submits that it is not disputed that Gulfstream was not aware of any purported protected activity before the decision it made on August 27, 2021, to stop working with Complainant. According to Respondent, Complainant never communicated to Gulfstream prior to his removal that he believed that Gulfstream's RFC process violated the ODA Manual or otherwise created any regulatory or safety concerns. Motion, p. 27. Respondent specifically contends that Complainant was never asked to sign off on a non-compliant RFC; instead, Respondent (via supervisor James Lee "JL" Cerkoney) asked Complainant to "work" RFCs for a particular aircraft, which was his job, but Complainant refused to perform any work on RFCs for the aircraft because ODA Site Administrator Wayne Shade had rejected the new RFC format proposed by Complainant. *Id*., p. 28. Also, Respondent submits that nothing about Respondent's use of the pre-existing RFC format violated the ODA Manual or otherwise created regulatory or safety concerns. *Id*., pp. 28-30. Per Respondent, if anything, it was Complainant's proposed new RFC format using an incorporated data list was not consistent with the Certification/Conformity Plan. *Id*., p. 30. Respondent additionally argues that Complainant did not identify any purported safety or regulatory concerns to Gulfstream prior to his removal. *Id*., pp. 30-31. According to Respondent, the changes proposed by Complainant related to time savings and efficiency but not expressly to compliance or safety concerns. *Id*. Respondent asserts that Complainant first raised compliance concerns regarding the RFC format on February 22, 2022, (Ex. 2, pp. 88, 98), after the decision had been made and communicated that Gulfstream would no longer use his services. *Id*., p. 32.

Respondent further argues that it removed Complainant solely because of his unprofessional behavior. Motion, pp. 32-35. Respondent submits that the decision to remove Complainant was made collectively during a conversation among Snyder, Salzman, and Nilson,[1] while Snyder had ultimate responsibility for the decision because he managed the engineering group to which Complainant reported. *Id*., p. 34 (Ex. 3, ⁋⁋ 14-15). Respondent relies on evidence that:

> Complainant sent "multiple aggressive emails on August 22, 2021, in response to questions from a supervisor regarding a new RFC format" that Complainant proposed. (Ex. 11, pp. 467-68; Ex. 3, ⁋ 10).
> Complainant did not attend a meeting regarding the new RFC format and did not inform anyone he did not plan to attend. (Ex. 2, p. 129; Ex. 3, ⁋ 11).
> Complainant sent "multiple unprofessional text messages to his manager" and was no longer willing to work on the project anymore. (Ex. 14, pp. 14750-52; Ex. 3, ⁋ 11).
> Complainant called two colleagues "terrorists." (Ex. 16, p. 394; Ex. 14, p. 14752).
> Complainant refused to complete work. (Ex. 14, pp. 14748-54; Ex. 16, p. 394; Ex. 3, ⁋ 12).

[1] Kris Snyder, Respondent's Completions Engineering Manager, managed the team that Complainant supported; Charlie Salzman, Director of Completions Engineering, was Snyder's Director; and Robert Nilson was Wayne Shade's supervisor. Ex. 3 (Snyder Decl.)

According to Respondent, Complainant has no evidence to dispute that he was removed because of the above unprofessional behavior. Motion, pp. 34-35.

Last, Respondent argues in the alternative that partial summary decision should be granted with respect to any purported protected activity that occurred after the decision was made on August 27, 2021, to remove Complainant from Gulfstream work. *Id*., p. 36. Respondent submits that this argument concerns twenty-five Issue Resolutions ("IR") dated from September 19, 2021, through June 6, 2023. *Id*., p. 37. Per Respondent, activity that occurred after the August 27 decision to remove Complainant cannot be a contributing factor to that decision. *Id*.

II. Opposition to Motion

Complainant responded to each of Respondent's numbered statements of undisputed facts, identifying matters that are admitted (nos. 1-4, 7, 9, 11, 18, 42) and other matters either admitted with qualifications or denied without or without qualifications (nos. 5, 6, 8, 10, 12-17, 19-41, 43-49). Response, pp. 4-18. Among other things, Complainant submitted additional facts concerning conformity inspections of new aircraft, including that where EWIS[2] compliance or other specialized engineering inspection is required, an EAR who is a member of the ODA unit may be required to conduct a compliance inspection. Response, ⁋ 10. Complainant submitted the Declaration of Mr. Wolters in opposition to the motion with exhibits (AAAA-EEEE) and counsel Seham's Declaration with Exhibit F.[3]

Complainant argues that his OSHA complaint was timely because he filed it within 90 days of multiple adverse actions. Response, p. 19. He contends that Respondent "opened the door' to a new claim with a new accrual date with the imposition of each 'additional adverse action.'" *Id*. (citing cases). Complainant relies on his declaration to support his position that there were multiple adverse actions starting on January 11, 2022, and continuing through June 16, 2022, and two actions on August 9, 2022, in which Complainant sought employment opportunities with Respondent that were denied. Response, pp. 20-21 (Wolters Declaration, ⁋ 34). Complainant thus argues that there is not a single, discrete adverse employment action that occurred in August 2021, contrary to Respondent's arguments. Response, p. 22. Complainant submits that he continued to seek employment opportunities with Gulfstream in late 2021 and throughout 2022, because he was unaware of any bar to continuing employment with Gulfstream after August 2021. *Id*., p. 26 (Wolters Declaration, ⁋ 34; Ex. W). Complainant was told in response to these applications that his services were not needed at the time. (Wolters Declaration, ⁋ 34). Complainant was encouraged to continue applying. (Wolters Declaration, ⁋ 74; Ex. TTT).

Complainant further contends that any decision discussed by Nilson, Snyder, and Salzman in August 2021 was limited to the project that Complainant was working on at the time. Response, pp. 22-23 (Salzman Dep., pp. 95-96). Complainant cites Salzman's deposition testimony denying any communication to Complainant of a "permanent bar" that would prevent

[2] EWIS refers to electrical wiring interconnection system. *See* 14 C.F.R. § 25.1701(a).

[3] Complainant previously submitted the Declaration of Mr. Wolters, Exhibits A-Z, AA-ZZ, AAA-ZZZ (without an Exhibit KKK), and Seham Declaration with Exhibits A-E in support of his Motion for Summary Decision that will be addressed separately. In his response to Respondent's motion, Complainant at times refers to these declarations and exhibits associated with his own motion.

him from ever working for Gulfstream in the future. *Id*. Complainant attests that during his September 17, 2021, discussion with Snyder, he was told that Respondent was removing him from his two-week assignment in Savannah purportedly because Complainant had accepted work from another manufacturer, thus reinforcing the notion of Complainant's removal from a particular project only. Response, p. 23. Complainant asserts that his understanding that the removal was project specific was reinforced by Gulfstream continuing to provide Complainant the type of training that would sustain his eligibility for hire within the ODA unit. Complainant states that he was paid to attend all such training that occurred throughout 2022 on dates in March, June, and August 2022. *Id*., p. 24 (Wolters Opp. Declaration, ⁋ 29; Ex. CCCC).

Per Complainant, "It was not until July 25, 2022, that Gulfstream sent Wolters' supervisor James Cerkoney a notification advising: "This message is to inform you that the following direct report has been terminated." *Id*. (Ex. AAAA). The notification identified: "Termination Date: 07/25/22." *Id*. Cerkoney was instructed at that time to collect from Complainant a long list of Gulfstream property including hard tokens, iron keys, cell phones, I-pads, and all associated hardware. *Id*. Complainant further states that on August 15, 2022, Gulfstream "permanently removed [him] from its ODA program." Response, p. 24 (Wolters Declaration, ⁋ 71; Ex. EE). Complainant argues that if he had been removed by Gulfstream prior to July 25, 2022, the above notification and related directives would not have been necessary. He points to his retention of a Gulfstream security badge, camera pass, and laptop until July 14, 2022. Response, p. 25 (Wolters Declaration, ⁋ 31; Wolters Opp. Declaration, ⁋ 2; Ex. BBBB). He also cites a Human Resources statement from October 13, 2021, that describes Complainant as being in "good standing" and retaining "his authorization." (Ex. S).

Complainant denies Respondent's position that he had acknowledged being barred from employment because of Complainant's later statement that he "was given his walking papers on September 17 [2021]." (Respondent's Ex. 22). Complainant cites the remainder of the statement omitted by Respondent, which indicated that Complainant was aware only of being sent home from a project at that time due to taking another job, and there was no communication that Complainant's services were no longer needed. (*Id*.). Thus, Complainant suggests that there remains a reasonable inference from the evidence that any discussion of Complainant's removal in August 2021 concerning a particular short-term project only. At the least, Complainant submits that there are disputed facts regarding the extent of the removal contemplated in August 2021 and communicated to Complainant at that time. Response, p. 25. Complainant also cites ARB precedent that the systematic exclusion of an individual from consideration for employment is a continuing course of conduct that may constitute a continuing violation. Response, pp. 28-30.

Regarding incidents of protected activity, Complainant asserts that Respondent's summary decision argument is based on three separate and equally unsustainable premises: (1) that the only adverse action that Respondent needs to address is its purported termination of Complainant on August 27, 2021; (2) that (assuming this first premise is sustained) Complainant engaged in no protected activity prior to August 2021; and (3) that Complainant engaged in no protected activity in the context of the August 2021 RFC dispute. Response, p. 30. Complainant submits that Respondent only briefed the last of the three premises.

Complainant argues that he engaged in numerous instances of protected activity after the 2021 RFC dispute. Response, pp. 30-35. Prior to the adverse actions that Complainant states occurred in June, July, and August 2022, Complainant states that he engaged in protected activity regarding the "poke home" dispute (February 2021 through August 10, 2022)[4] and also with regard to the RFC dispute (August 2021). Complainant points to more than 20 formal complaints he filed between September 2021 and July 2022 through the IR process.[5] *Id*., p. 31. By way of example, Complainant notes his 2021 complaint identifying "compliance issues," as recognized by the FAA's determination dated August 10, 2022. *Id*. (Wolters Declaration, ⁋⁋ 19, 69-70; Ex. J, pp. 2-4). Complainant identified separate examples of other 2021 complaints addressed by agency determinations dated November 17, 2022, and June 8, 2022, Response, pp. 33-35. Per Complainant, "there is no question that Mr. Wolters' IR filings raised compliance issues concerning Gulfstream's compliance with federal aviation regulations that were of serious concern to the FAA," which thus constituted protected activity. *Id*., p. 34. Complainant also asserts that his protected activity commences with the filing of the complaint through the IR process and continued through the date of the FAA's determinations. *Id*.

Complainant raises a specific argument that the August 2021 RFC dispute also involved protected activity. *Id*., pp. 38-42. He contends that the issue of an EAR's independence when preparing an RFC inherently involves a compliance issue, and, additionally, the format issue that he raised involved a question of violating federal aviation standards. Complainant relies on ODA Manual language that the EAR alone is responsible for the technical content of the RFC, consisting of specific conformity requirements and associated data. *Id*., pp. 38-40. Although Complainant acknowledges that the FAA ultimately sided with Respondent with respect to the issue of RFC content, Complainant contends that a red flag was raised on the issue of interference. *Id*., p. 41. Thus, Complainant points to the issue of interference with his EAR duties as reflecting his engagement in protected activity in connection with the RFC dispute. *Id*., p. 42.

Complainant also addresses Respondent's position that it removed Complainant solely due to his unprofessional behavior. *Id*., pp. 42-45. Complainant argues that to reach a conclusion on this issue, one must first accept Respondent's position that the adverse action occurred in August 2021. Complainant repeats his position that there are disputed facts regarding the date of his termination. Complainant additionally asserts that the rationale for his termination cited by Respondent includes references to his protected activity, i.e., his communications over meeting ODA Manual requirements and seeking a cessation of interference with his EAR duties. *Id*., p.

[4] Complainant describes initially raising concerns by email in February 2021 to ODA Site Administrator Shade regarding including "poke home interface data" on FAA Form 8129-10. This dispute concerned documentation requirements for "poke home" features in wiring harnesses in support of EWIS engineering compliance inspections, and, more specifically, whether a proper EWIS compliance inspection required data from two different sources. Response, pp. 35-36. Complainant states that he cited specific ODA Manual language with which Respondent failed to comply, i.e., language requiring "all design data associated with a part/component or installation be properly approved prior to issuance of an FAA Form 8120-10," and "design data used for conformity must be approved for design and construction purposes (at a minimum) prior to the issuance of the RFC." *Id*., p. 36 (Ex. I, p. 4). When Shade did not take action, Complainant states he pressed the matter via the IR process, which culminated in a recognition that the EAR should have autonomy when determining the data necessary for completing the RFC and that Complainant had raised credible concerns. *Id*.

[5] Complainant here notes that he has also moved for summary decision regarding the instances of protected activity, which will be addressed by separate order.

43. Complainant thus describes the purported unprofessional behavior as "intertwined" with his protected activity, and thus he contends Respondent must prove its affirmative defense by clear and convincing evidence. Complainant also cites to the temporal proximity between the final adverse action on August 15, 2022, five days after the FAA issued its determination that Gulfstream would be subject to increased oversight and special audits. (Ex. J, p. 5). Complainant further argues that Respondent presented shifting rationales for its actions.

III. Legal Standards

A. Summary Decision

The standard for granting summary decision is set forth at 29 C.F.R. § 18.72, which is derived from Rule 56 of the Federal Rules of Civil Procedure. Section 18.72 permits an administrative law judge to enter summary decision for either party "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law." 29 C.F.R. § 18.72(a). If the moving party meets the initial burden of showing no genuine issue of material fact, the burden shifts to the non-moving party to produce evidence or designate facts showing the existence of genuine issue(s) for trial with doubts and reasonable inferences resolved in favor of the non-moving party. *Reeves v. Sanderson Plumbing Products Inc.*, 530 U.S. 133, 150-51 (2000); *Matsushita Elec. Indus. Co. Ltd., v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Pegram v. Honeywell, Inc.*, 361 F.3d 272, 278 (5th Cir. 2004). An issue is material if the facts alleged are such as to constitute a legal defense or are of such nature as to affect the result of the action. A fact is material and precludes a grant of a summary decision if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or a defense asserted by the parties. *Matsushita*, 475 U.S. at 587.

Section 18.72(c) requires parties to support their respective positions with materials in the record, show that the materials cited by the opposing party do not establish the absence or presence of a genuine dispute, or demonstrate that the adverse party cannot produce admissible evidence to support its position. 29 C.F.R. § 18.72(c). The non-movant must present affirmative evidence in order to defeat a properly supported motion for summary decision. *Anderson v. Liberty Lobby. Inc.*, 477 U.S. 242, 255 (1986). In reviewing a request for summary decision, all evidence and inferences must be viewed in the light most favorable to the non-moving party. *Id.* at 262. There must be no controversy regarding the evidentiary facts or the inferences to be drawn therefrom. *Donahue v. Windsor Locks Bd. of Fire Comm'rs*, 834 F.2d 54 (2d Cir. 1987).

The administrative law judge cannot summarily try the facts. Rather, the administrative law judge must apply the law to the facts that have been established by the parties. *See* 10A Wright and Miller, *Federal Practice and Procedure*, § 2725 at 104. A motion cannot be granted merely because the movant's position appears more plausible or because the opponent is not likely to prevail at trial. *Id.* at 104-05. In short, the trier of fact has no discretion to resolve factual disputes on a summary decision motion. *Id.*, § 2728 at 186. Accordingly, "if the evidence presented on the motion is subject to conflicting interpretations, or reasonable men might differ on its significance, summary judgment is improper." *Id.*, § 2725 at 106, 109. Once it is determined that a triable issue exists, the inquiry is at an end and summary decision must be denied. *Id.*, § 2728 at 187.

B. AIR21

AIR 21 provides that "[no] air carrier or contractor or subcontractor of an air carrier may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment," 49 U.S.C.A. § 42121(a), because the employee has engaged in certain protected activities. Relevant to this proceeding, section 42121(a)(1) of the Act provides that protected activity occurs when an employee "provided, caused to be provided, or is about to provide (with any knowledge of the employer) … to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States." 49 U.S.C. § 42121(a); 29 C.F.R. § 1979.102(a), (b).

In order to prevail, a complainant must make a *prima facie* showing that his protected activity was a contributing factor in the unfavorable personnel action alleged in the complaint. 49 U.S.C. § 42121(b)(2)(B)(i). A *prima facie* showing involves the following elements:

(i) The employee engaged in a protected activity or conduct;
(ii) The named person knew or suspected, actually or constructively, that the employee engaged in the protected activity;
(iii) The employee suffered an unfavorable personnel action; and
(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the unfavorable action.

29 C.F.R. § 1979.104(b)(1). *See also Clemmons v. Ameristar Airways, Inc*., ARB Nos. 05-048, 05-096, ALJ No. 2004-AIR -11, slip op. at 6 (ARB June 29, 2007) (citing 49 U.S.C. § 42121(b)(2)(B)(i); *Clark v. Pace Airlines, Inc.*, ARB No. 04- 150, ALJ No. 2003-AIR-28, slip op. at 11 (ARB Nov. 30, 2006)). Complainant must satisfy all elements of his burden by a preponderance of the evidence.

If the complainant meets his burden, the employer must demonstrate by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of the protected activity. 49 US.C. § 42121(b)(2)(B)(ii).

IV. Discussion

A. Timeliness

A retaliation complaint with OSHA must be filed within 90 days after the alleged violation occurs, which is defined as "when the discriminatory decision has been both made and communicated to the complainant." 49 U.S.C.A. § 42121(b)(1); 29 C.F.R. § 1979.103(d). It is not disputed that Complainant filed the OSHA complaint on August 19, 2022. The 90-day period preceding the OSHA filing date was May 21, 2022.

Material Facts in dispute preclude summary decision on the question of timeliness. Complainant filed the OSHA complaint within 90 days of Respondent's communication to him on August 16, 2022, that his "authority as a Gulfstream ODA Electrical EAR is terminated effective August 15, 2022." Ex. 32. The formal letter dated August 15, 2022, advised that termination was "due to change of employment status, as we understand that you are no longer employed by the supplier through which you supported Gulfstream and you have not received assignments from Gulfstream since September 2021." *Id*. The supplier referenced in the letter, RF Enterprises, Inc., had informed Respondent in February 2022 of the change in employment status. Ex. 30. Respondent's arguments regarding timeliness rest on the events that occurred in August 2021, i.e., the discussions among Respondent's managers and the decision made to stop using Complainant as a consultant. The facts presented by Respondent reflect that Complainant was not part of the August 2021 discussions or privy to them. Motion, Statement of Facts, ⁋⁋ 34-37.

Respondent acknowledges that no discussion with Complainant about the end of Respondent's use of his services took place until mid-September 2021 when Complainant traveled to Savannah, one of his usual work locations. *Id*., ⁋⁋ 38-39. Both sides agree that Complainant and Snyder had a discussion on September 17, 2021, in Savannah, after which Complainant returned home. Respondent submits that in the conversation, Snyder advised Complainant that he would "no longer be needed on future Gulfstream projects.' *Id*., ⁋ 39. However, in the Snyder deposition transcript cited, Snyder testified regarding advising Complainant to get the earliest available flight home, and he did not recall why he did not collect Complainant's equipment or badge. Ex. 17, p. 133. Just prior to these statements, Snyder was asked why he allowed Complainant to remain in Savannah for a couple of days after telling him Respondent was "no longer going to be using [Complainant's] services." *Id*., p. 132. Snyder does not testify in the cited portion that he communicated that Complainant's services were no longer needed "on future Gulfstream projects." *See id*., pp. 132-33. Construing the facts in the light most favorable to the non-movant, the evidence indicates that Respondent's managers were, in fact, hesitant to communicate the complete cessation of their use Complainant's services in August or September 2021, to avoid having him leave open, active tasks or projects unfinished.

Complainant presented evidence that his understanding from his communication with Snyder in Savannah in September 2021 was that he was being removed from the particular project and not all ongoing or future projects. Wolters Decl., ⁋⁋ 30-34 (Salzman Depo., pp. 95-96); Wolters Decl. Opp. to MSD, ⁋⁋ 24-25 (Ex. AAAA)). Respondent cites other evidence, asserting that Complainant had expressed an understanding after September 2021 that he was not going to be used for future Gulfstream projects and thus his removal was not project specific. Respondent cites a timeline prepared by Complainant (in March 2023 as part of an FAA proceeding) in which Complainant described being given his "walking papers" on September 17 [2021] verbally by Snyder and "asked to leave Savannah." Ex. 22, p. 2720-21; Ex. 24, pp. 2734, 2736. Respondent accurately cites Complainant as acknowledging that he "would no longer be working on new projects," however, the statement is made several months after the formal termination of Complainant's services documented in writing in July 2022 and thus with the benefit of hindsight. The later statement permits an inference that Complainant had such understanding at an earlier time, but inferences are not appropriate at the summary decision

stage. I also considered Complainant's statements to human resources, cited by Respondent, which reflect his understanding in September 2021 that Snyder communicated "they will no longer be using my services" and Complainant "would not be assigned any new work," which is supportive of Respondent's arguments that a complained-of adverse employment action occurred on or around September 17, 2021. *See* Ex. 25, p. 2.

Complainant also cited evidence that his removal from all Gulfstream projects was not documented until the July 25, 2022, notification to Cerkoney that Wolters "has been terminated" with "termination date" of July 25, 2022, (Ex. AAAA), and that he was not aware of the decision until August 16, 2022, on delivery of the August 15, 2022, letter (Ex. EE), stating his authority as a Gulfstream ODA Electrical EAR was "terminated effective August 15, 2022. Complainant presented evidence that until that time (August 2022), he continued to work on Gulfstream projects with the equipment and access necessary for the work, as well as remaining current on training for his authorization status for Gulfstream projects (Exs. CCCC, DDDD).

Complainant urges application of the "continuing violation" doctrine, which Respondent opposes, relying on *Davidson v America Online*, 337 F.3d 1179, 1183-85 (10th Cir. 2003). In *Davidson*, the Tenth Circuit addressed application of the continuing-violation theory after *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002), and noted that "when a plaintiff pursues several disparate treatment claims based on discrete discriminatory acts, the limitations period will begin to run for each individual act from the date on which the underlying act occurs." *Davidison*, 337 F.3d at 1185. The Court found that two refusals to hire the complainant on occasions in two separate years (1997 and 1998) were discrete acts and not sufficiently related to qualify as a continuing violation. *Id*. at 1183-85 (concluding that earlier act in 1997 time-barred). Tribunals have examined whether a complaint was timely filed after an employer's notice of an act that was sufficiently "final and unequivocal." *Bachmeier v. Tombstone Pizza*, No. 96-STA-33, slip op. at 2 (ALJ Nov. 25, 1996) (citing *English v. Whitfield*, 858 F.2d 957, 962 (4th Cir. 1988)). Respondent has acknowledged that the time for filing a complaint begins when the employee knew or should have known of the adverse action. Motion, p. 23 (citing ARB cases).

Respondent contends that the only acts occurring in the 90-day time-limitations period (June 2022 removal from computer access and August 2022 removal from list of available ODA unit members) were only "steps taken … to effectuate [an earlier] termination." Respondent seeks to exclude from consideration its prior decision to no longer use Complainant's services on or about August 26, 2021, which it submits was communication to Complainant on or about September 17, 2021. Contending that the 2021 acts are not actionable because untimely, Respondent would then extend the claim preclusion to the later "effectuation" of the termination almost one year later, based on the premise Complainant should have been aware of the full scope and nature of the termination as of the 2021 acts. Complainant presented conflicting evidence discussed herein, however, that the notice of termination he received in August 2022 was the only notice of termination of which he had adequate awareness to trigger the limitations period. As such, there are facts in dispute regarding Complainant's awareness of Respondent's decision to no longer use his services, i.e., whether the decision, and the full import of the act, was adequately communicated to Complainant on or around September 17, 2021, or whether Complainant subjectively believed the decision at the time was project-specific. Because this

evidence must be weighed, and credibility determinations made, the undersigned cannot reach on summary decision whether discrete, actionable acts occurred on or about August/September 2021 or otherwise occurred outside the applicable statute of limitations.[6]

B. Protected Activity

"Protected activity under AIR 21 has two elements: (1) the information that the complainant provides must involve a purported violation of a regulation, order, or standard of the FAA or federal law relating to air carrier safety, though the complainant need not prove an actual violation; and (2) the complainant's belief that a violation occurred must be subjectively held and objectively reasonable." *Cerny v. Triumph Aerostructures-Vought Aircraft Division,* ARB No. 2019-0025, ALJ No. 2016-AIR-00003, slip op. at 6 (ARB Oct. 31, 2019) (affirming ALJ finding that no protected activity occurred where employee did not have objectively reasonable belief that violation of federal rule or regulation related to air safety occurred or was about to occur). "The information provided to the employer or federal government must be specific in relation to a given practice, condition, directive, or event that affects aircraft safety." *Id*. (citing *Burdette v. ExpressJet Airlines, Inc*., ARB No. 14-059, ALJ No. 2013-AIR-016 (ARB Jan. 21, 2016)).

An employee's belief that an employer's action has violated a statute or regulation affecting aircraft safety goes to his subjective belief. *Cerny*, ARB No. 2019-0025, slip op. at 7 (citing *Sylvester v. Parexel Int'l*, LLC, ARB No. 07-123, ALJ Nos. 2007-SOX-039, -042, slip op. at 14-15 (ARB May 25, 2011)).

A belief is objectively reasonable "when a reasonable person, with the same training and experience as the employee, would believe that the conduct implicated in the employee's communication could rise to the level of a violation of one of the provisions of Federal law enumerated" in the Act. *Cerny*, ARB No. 2019-0025, slip op. at 7 (citations omitted). Thus, a complainant need not prove an actual violation but need only establish a reasonable belief that his safety concern was valid. *Furland v. American Airlines, Inc*., ARB Nos. 09-102, 10-130, ALJ No. 2008-AIR-011, slip op. at 4-5 (ARB July 27, 2011).

Gulfstream's arguments concerning any awareness of Complainant's purported protected activity focus largely on the time period leading up to its internal discussions regarding the decision to stop using Complainant in or around August 2021. Gulfstream argues a lack of awareness at that time that Complainant believed the internal RFC process violated the ODA Manual or otherwise reflected safety/regulatory concerns. As an initial matter, the unavailability of summary decision on the issue of timeliness undermines Respondent's summary decision arguments concerning a lack of awareness of claimed protected activity. Also, even if the August/September 2021 employment actions were not actionable because untimely, evidence of alleged protected activity at that time may be presented by Complainant. It is the adverse action, not the instance of protected activity, that is or is not actionable based on the timing of the complainant's complaint. *See Brune v. Horizon Air Industries*, No. 04-037 (ARB Jan. 31, 2006), slip op. at 6 n. 9 (citing *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002)).

[6] For this reason, Respondent's alternative argument for partial summary decision is also denied.

Further, contrary to Respondent's arguments that Complainant's RFC format-related complaints concerned solely efficiency and not issues of aviation safety, a fact finder may credit conflicting evidence submitted by Complainant that he was raising aviation safety-related concerns due to the issue of EAR independence and importance of exercising such duties without interference. Wolters Decl. for Opp., ⁋⁋ 7, 10, 12; *see* Exs. B, pp. 2-5, F, L. The parties thus presented competing evidence regarding the relationship between Complainant's conformity process concerns and aviation safety. Complainant has also cited FAA determinations that at least some of his several complaints filed from September 2021 until about July 2022, involved Respondent's compliance with federal aviation safety. Wolters Decl., ⁋⁋ 42-70 and exhibits. Complainant also submitted evidence showing, or least supporting an inference, that he raised compliance issues related to the inclusion of "poke home" interface data on FAA Form 8120-10 in 2021. *See* Wolters Decl. for Reply (April 2, 2024); Exs, I, J, UUU (referencing the credibility of Complainant's concern and risk of non-compliance regarding ODA procedures and/or FAA requirements). Because the evidence is in conflict, requires credibility determinations, and/or requires inferences to be drawn from the evidence, summary decision is denied.

C. Respondent Would Have Taken Same Action

If Complainant establishes a *prima facie* case of retaliation, Respondent has the burden to produce by clear and convincing proof that it would have taken the same complained-of adverse action in the absence of protected activity. *Clemmons v. Ameristar Airways, Inc*., ARB Nos. 05-048, -096, ALJ No. 2004-AIR-011, slip op. at 10 (ARB June 29, 2007).

Respondent's arguments that it removed Complainant solely because of his unprofessional behavior are supported by evidence that it submitted, which permits the inference that Respondent viewed Complainant's correspondence as unprofessional. The evidence, however, requires credibility determinations, the weighing of evidence, and inferences based on the evidence to reach a legal conclusion that Respondent is able to meet its burden of proof that it acted for non-retaliatory reasons regardless of any *prima facie* burden satisfied by Complainant.

The ARB has observed that summary decisions are difficult in "employment discrimination cases, where intent, motivation and credibility are crucial issues." *Seay v Norfolk Southern Ry. Co*., Nos. 14-022, 14-034, slip op. at 9 (ARB Oct. 17, 2015). The Board noted that the decision regarding causation is rendered even more difficult in cases where a complainant need only show contributing-factor causation, which is the case here. *See id.* Even where a respondent identifies a legitimate, non-discriminatory reason for its actions, a complainant may create a genuine issue of material fact by pointing to other evidence that, if believed, could (a) discredit the respondent's reasons or (b) show that the protected activity remained a contributing factor even if the respondent's reasons are true. *Id*.

Here, crediting as true Respondent's evidence regarding its view of Complainant's behavior as unprofessional, Complainant has nonetheless cited other evidence that creates genuine issues of material fact on the issue of causation. Complainant cited different rationales proffered by Respondent for no longer using Complainant's services, including evidence that he was initially told in September 2021 that his services were not needed because he had taken another project that conflicted with work for Gulfstream, that some in the company viewed

Complainant as having a good demeanor at the same time his services were being discontinued,[7] that Respondent's documents showed Complainant was "in good standing" in October 2021, that the discontinued use of Complainant's services was due to a decrease in the need for his skill set[8] and not due to any misconduct on his part, and the final termination letter attributing the change in employment status to the cessation of Complainant's employment with his supplier, in addition to the absence of new assignments from Gulfstream since September 2021. Wolters Decl., ⁋⁋ 33-34 (Exs. EE, U, V, W, X). Complainant also pointed to the temporal proximity between the complained-of instances of protected activity and alleged adverse employment actions, which is sufficient to defeat summary decision on the issue of causation, particularly the communication of termination effective August 15, 2022 (Ex. EE), following the FAA's resolution of IR-2021-003 as of August 10, 2022 (Ex. J). *See Bondurant v. Southwest Airlines*, Inc., No. 14-049 (ARB Feb. 29, 2016) (vacating order granting summary decision for respondent); *see also Jackson v. Major Transport, Inc*., No. 09-113, slip op. at 3 n. 1 (ARB Feb. 28, 2012) (noting that shifting explanations for adverse action can support a finding of pretext and temporal proximity can establish retaliatory intent). Therefore, summary decision is denied.

CONCLUSION AND ORDER

After construing the evidence in the light most favorable to the non-movant, I conclude that genuine issues of material fact prevent summary decision, and thus Respondent's Motion for Summary Decision is **DENIED.**

Before any pre-hearing deadlines are re-instated, a separate order will issue regarding Complainant's Motion for Summary Decision.

SO ORDERED.

Digitally signed by Angela F. Donaldson
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ANGELA F. DONALDSON
Administrative Law Judge

[7] Complainant submitted evidence of such comments by Service Center Engineering Group Head Scott Wallace. Ex. U, V.

[8] Complainant cites the statement of Sasha Cejic, Director of Service Center Engineering, attributing the Service Center's reduction in use of Complainant to a decrease in the need for his "skill set." Ex. U, p. 3.

SERVICE SHEET

Case Name: **Wolters_v_Gulfstream_Aerospace_**

Case Number: **2023AIR00007**

Document Title: **ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DECISION**

I hereby certify that a copy of the above-referenced document was sent to the following this 21st day of April, 2026:

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