U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

In the Matter of:

JAMES W. TINDALL,

COMPLAINANT,

v.

UNITED STATES DEPARTMENT OF THE TREASURY,

RESPONDENT.

ARB CASE NO. 2022-0030

ALJ CASE NO. 2021-TAX-00005

DATE: May 16, 2022

Appearances:

For the Complainant:
James W. Tindall; *pro se*; Marietta, Georgia

For the Respondent:
Kimberly S. Barsa, Esq. and Jordan L. Thomas, Esq.; *Internal Revenue Service Office of Chief Counsel*; Washington, District of Columbia

Before: James D. McGinley, *Chief Administrative Appeals Judge* and Stephen M. Godek, *Administrative Appeals Judge*

DECISION AND ORDER

PER CURIAM. James W. Tindall (Complainant) filed a complaint under the Taxpayer First Act of 2019[1] (TFA or TAX), and its implementing regulations,[2] alleging that his employer, the Internal Revenue Service, a bureau of the Department of the Treasury (Respondent), unlawfully discriminated against him under TFA's whistleblower protection provisions.[3] An Administrative Law Judge (ALJ) found that Complainant failed to prove that the TFA contains an explicit waiver of sovereign immunity as to whistleblower claims against the United States. Complainant appealed the ALJ's decision to the Administrative Review Board (Board). We affirm.

The Secretary of Labor has delegated to the Board the authority to issue agency decisions in this matter.[4] The Board reviews an ALJ's conclusions of law de novo.[5]

Upon review of the ALJ's Decision and Order Dismissing Complaint for Lack of Subject Matter Jurisdiction, we conclude that it is a well-reasoned ruling based on the applicable law. The Supreme Court has held "that a waiver of sovereign immunity must be 'unequivocally expressed' in statutory text."[6] Relevant in the current case, the anti-retaliation provision of TFA prohibits any "employer" from retaliating against any employee,[7] while the enforcement section of TFA states that that "[a] person who alleges discharge or other reprisal by any person" may seek relief.[8] The statute does not explicitly define "employer" or "person."[9]

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1 The procedures set forth at 29 C.F.R. § 1989 apply until the Occupational Safety and Health Administration promulgates procedures specific to the TFA. *See* 26 U.S.C. § 7623(d)(2)(B)(i).

2 29 C.F.R. § 1989 (2021).

3 26 U.S.C. § 7623(d)(1).

4 Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13186 (Mar. 6, 2020).

5 *See Garza v. Saulsbury Indus.*, ARB No. 2018-0036, ALJ No. 2016-WPC-00002, slip op. at 3 (ARB June 29, 2020) (citations omitted).

6 *FAA v. Cooper*, 566 U.S. 284, 290 (2012) (quoting *Lane v. Peña*, 518 U.S. 187, 192 (1996)).

7 26 U.S.C. § 7623(d)(1).

8 26 U.S.C. § 7623(d)(2).

9 *See Peck v. U.S. Dep't of Lab., Admin. Rev. Bd.*, 996 F.3d 224, 230-32 (4th Cir. 2021) (rejecting the argument that "employer" and "person" should be given be the same meaning under the Energy Reorganization Act of 1974's (ERA) anti-retaliation and remedy provisions).

On March 22, 2022, the Department of Labor (Department) published an interim final regulation explaining that "[a] person who believes they have been discharged or otherwise retaliated against by any person in violation of TFA may file" a complaint.[10] The Department defined "person" as "mean[ing] an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, or estate."[11] The Department did not identify the Department of Treasury or any other governmental entities as a "person" from whom relief may be sought under TFA's anti-retaliation provision. The Board is bound by the Department's regulations.[12]

Complainant failed to demonstrate that the whistleblower provision of TAX contains an unequivocal expression of intent to waive sovereign immunity. Accordingly, we **AFFIRM**, **ADOPT**, and **ATTACH** the ALJ's Decision and Order Dismissing Complaint for Lack of Subject Matter Jurisdiction.[13]

SO ORDERED.[14]

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[10] 29 C.F.R. § 1989.103(a).

[11] 29 C.F.R. § 1989.101.

[12] Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13186, 13187 (Mar. 6, 2020) ("The Board shall not have jurisdiction to pass on the validity of any portion of the Code of Federal Regulations that has been duly promulgated by the Department of Labor and shall observe the provisions thereof . . ."); *Stouffer Foods Corp. v. Dole*, No. 7:89-2149-3, 1990 WL 58502, * 1 (D. S. C. Jan. 23, 1990) (citations omitted) ("Defendant's [[Department of Labor] administrative law judges are bound by Executive Order 11246 and its implementing regulations; they have no jurisdiction to pass on their validity.").

[13] In affirming the ALJ's Order, we reject the Complainant's argument on appeal that the ALJ erred by concluding neither the waiver of sovereign immunity in the Administrative Procedure Act or the ultra vires exception to sovereign immunity were applicable to the current case.

[14] In any appeal of this Decision and Order that may be filed, we note that the appropriately named party is the Secretary, Department of Labor (not the Administrative Review Board).

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 04 March 2022

OALJ Case No.: 2021-TAX-00005
OSHA Case No. 4-5070-21-125

In the Matter of:

JAMES W. TINDALL,
Complainant,

v.

UNITED STATES DEPARTMENT OF THE TREASURY,
Respondent.

Appearances:

James W. Tindall, In Pro Per
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For the Complainant

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Internal Revenue Service
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Washington, District of Columbia
For the Respondent

Sarah J. Starrett, Esq.
Office of the Solicitor
U.S. Department of Labor
Washington, District of Columbia
For Amicus Curiae

DECISION AND ORDER DISMISSING COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION

Complainant James W. Tindall, representing himself, is suing the United States Department of the Treasury ("Treasury"). The case stems from a request he filed with the

Taxpayer Advocate Service[1] seeking assistance in collecting a 2019 whistleblower award. Complainant avers that Treasury employees responded to this request by threatening to investigate him. He alleges this violates the Taxpayer First Act of 2019 ("TAX" or "TFA"),[2] 26 U.S.C. § 7623(d).[3]

Background and Procedural History

Complainant initiated the above captioned action when he filed a complaint with the Department of Labor's Occupational Safety and Health Administration ("OSHA") on June 4, 2021. On July 23, 2021, the Secretary of Labor, acting through an OSHA Regional Administrator, dismissed the complaint after concluding that Treasury is "a federal agency and is NOT a person within the meaning of 29 U.S.C. § 652(4)" and "Complainant is a current federal employee . . . [of the] US Department of Treasury; and therefor (sic) NOT an employee within the meaning of 29 U.S.C. § 652(6)." [emphasis in original].[4] Complainant appealed by filing a letter with the Office of Administrative Law Judges ("OALJ") on July 24, 2021, and OALJ docketed the case the same day.

Based on OSHA's determination letter, there appeared to be a question of whether Congress has waived Treasury's sovereign immunity under the TFA, making the relief Complainant seeks available. In other words, absent an express waiver of sovereign immunity by Congress, Treasury may be shielded from suit, to include an administrative adjudication such as this one.[5] Accordingly, prior to addressing the merits of Complainant's allegations, on September 8, 2021 I issued *Notice of Docketing and Order to Show Cause Why Matter Should Not Be Dismissed for Lack of Subject Matter Jurisdiction* ("OTSC").[6] Complainant filed his response on

[1] The Taxpayer Advocate Service is an independent organization within the Internal Revenue Service for taxpayers seeking help in resolving problems that they have not been able to resolve by themselves. *See* "We're your voice at the IRS," TAXPAYER ADVOCATE SERVICE, www.taxpayeradvocate.irs.gov (last visited Feb. 28, 2022).

[2] The TFA prohibits retaliation by employers for lawful acts of their employees in providing information to or assisting the federal government in an investigation relating to underpayment of taxes or other violation of the internal revenue laws. 26 U.S.C. § 7623(d)(1).

[3] The procedures set forth at 29 C.F.R. § 1979 apply until the Occupational Safety and Health Administration promulgates procedures specific to the TFA. *See* 26 U.S.C. § 7623(d)(2)(B)(i).

[4] The OSHA investigator cited to 29 U.S.C. § 652(5) in the findings determination letter. That section provides that "[t]he term 'employer' means a person engaged in a business affecting commerce who has employees, but does not include the United States (not including the United States Postal Service) or any State or political subdivision of a State." It appears the OSHA investigator used definitions as set forth in the Occupational Safety and Health Act of 1970 and not the TFA. The term "employer" does not appear to be defined in the TFA, and there are no current regulations specific to the TFA. While the procedures set forth in 29 CFR 1979 apply until then, the definitions in that regulation appear to be specific to AIR-21.

[5] *See Fed. Mar. Comm'n v. S.C. State Ports Auth*., 535 U.S. 743, 761 (2002).

[6] OALJ docketed the case identifying Complainant as "Whit Tindall," the name in the June 4, 2021 complaint, the July 23, 2021 OSHA findings, and July 24, 2021 appeal letter, and the September 8, 2021 OTSC also identified Complainant as such. On September 10, 2021, Complainant moved to correct the case caption by substituting his correct legal name of "James W. Tindall" and replacing the Department of Treasury ("Treasury") as the named Respondent with the Department of Labor ("DOL"). Complainant asserts that because "DOL's dismissal of

September 17, 2021 ("Comp. Br."), and Respondent on October 14, 2021 ("Resp. Br."). The Solicitor of Labor filed a brief as amicus curiae on November 8, 2021 ("Am. Br."). On November 14, 2021, Complainant filed *Rebuttal to Respondent's Response to Order to Show Cause and Brief for the Solicitor of Labor* ("Reb.").

For the reasons more fully explained below, I conclude Congress has not unequivocally waived the Department of the Treasury's sovereign immunity under the TFA. Finding no other basis upon which to vest this tribunal with jurisdiction, Complainant's June 4, 2021 complaint must be dismissed.

Summaries of the Parties' Positions

Complainant, a revenue agent with the Internal Revenue Service ("IRS"), a bureau of the Department of the Treasury, alleges that Treasury agents violated the employee protection provisions of the TFA when they threatened to investigate him after he filed a complaint with the Taxpayer Advocate Service requesting assistance in collecting a 2019 whistleblower award.[7] While appearing to acknowledge that sovereign immunity generally shields federal agencies from being sued, Complainant posits that the waiver of sovereign immunity for Treasury can be found in the text of the TFA itself. (Comp. Br. at 13-18). Complainant also advances two alternative theories in support of a waiver of sovereign immunity in this case: the ultra vires exception to sovereign immunity (Comp Br. at 9) and the Administrative Procedure Act exception to sovereign immunity (Comp. Br. at 11). Complainant seeks an order from this tribunal compelling the IRS to pay him the whistleblower award.

Counsel for the Respondent avers that no federal court has yet examined whether sovereign immunity bars a complaint against a federal agency under the TFA's anti-retaliation provisions. Accordingly, Respondent urges this tribunal look to similar whistleblower retaliation statutes for guidance. (Resp. Br. at 3-5). Respondent submits that the Administrative Review Board's ("ARB") decision in *Peck v. Nuclear Regulatory Commission* is instructive.[8] In *Peck,* the ARB denied a complaint filed against the Nuclear Regulatory Commission under the Energy Reorganization Act's ("ERA") whistleblower protection provisions, concluding that as "the whistleblower protection provisions of the ERA do not contain an unequivocal expression of intent to waive sovereign immunity, the United States has not waived sovereign immunity for ERA

Complainant's complaint never addressed the actual conduct by Treasury but resulted from the DOL's improper definition of employer," DOL is the proper Respondent. I disagree. OSHA's dismissal of the complaint does not make it a party to these proceedings. Accordingly, that part of the Motion to substitute "James W. Tindall" for "Whit Tindall" is GRANTED and that part of the motion to substitute the DOL for Treasury is DENIED.

[7] The IRS administers two award programs that pay individuals who provide information to the IRS regarding tax violations, 26 U.S.C. § 7623(a) and § 7623(b). It appears Complainant applied for awards under both programs and received an award under Section § 7623(a). Complainant appealed the denial of the Section 7623(b) award, and the payment of his award under 7623(a) has apparently been withheld pending the outcome of the appeal. It is this refusal to pay that appears to form the basis of the instant retaliation action.

[8] ARB No. 17-062 (Dec. 19, 2019).

whistleblower claims [against the Nuclear Regulatory Commission ("NRC")]."[9] The United States Court of Appeals for the Fourth Circuit affirmed the ARB's order in *Peck*.[10] Respondent submits the ARB and the Fourth Circuit's analysis in *Peck* applies here. Like the ERA's anti-retaliation enforcement provisions, 26 U.S.C. § 7623(d) limits suits to those against a "person," and the Department of Treasury is not a "person," absent an affirmative showing to the contrary. Complainant has not done so, and this tribunal lacks jurisdiction. (Resp. Br. at 5). Respondent also avers that this case does not fall within the ultra vires or APA exceptions to sovereign immunity.

Counsel for the Solicitor of Labor, as amicus curiae, submits that, while the TFA prohibits retaliation by "employers," the remedies section only authorizes complaints against "persons" and the relevant definitions do not include the United States or its departments and agencies. Consistent with ARB and federal court precedent addressing similarly constructed statutes, as Congress has not unequivocally waived the Department of the Treasury's sovereign immunity, the complaint must be dismissed. (Am. Br. at 1). As to Complainant's assertion that the APA waives Treasury's sovereign immunity, while Section 702 of the APA does provide for judicial review of agency action, ARB precedent has held this provision inapplicable to administrative proceedings such as this one. (Am. Br. at 15). Finally, as to Complainant's argument the ultra vires exception grants jurisdiction here, while courts have recognized lawsuits against federal employees acting in their individual capacity or when acting outside the scope of their official authority, this complaint was not filed in a court and does not name any individual Treasury officer or employee. (Am. Br. at 16).

Discussion

Waiver Of Sovereign Immunity in the Taxpayer First Act

Sovereign immunity shields a federal agency from suit absent a waiver by the U.S. government,[11] and the waiver must be established by the statute itself.[12] In other words, Congress must unequivocally waive sovereign immunity to allow suit against a federal agency. *See, e.g., United States v. Mitchell*, 445 U.S. 535, 538 (1980). This sovereign immunity inquiry must focus on the enforcement provision of the statute and not simply the substantive provisions. In other words, even if a statute proscribes a federal agency from acting in a particular manner, that same agency is immune from being sued for such violations unless the statute clearly and unambiguously authorizes it.

[9] *Peck*, ARB No. No. 17-062, at 12.

[10] *Peck v. U.S. Dep' of Labor*, 996 F.3d 224 (4th Cir. 2021).

[11] "The government is not liable to suit unless it consents thereto, and its liability in suit cannot be extended beyond the plain language of the statute authorizing it." *Price v. United States*, 174 U.S. 373, 375-76 (1899).

[12] *United States v. Nordic Village Inc*., 503 U.S. 30, 37 (1992) ("[L]egislative history has no bearing on the ambiguity point . . . the 'unequivocal expression' of elimination of sovereign immunity that we insist upon is an expression in statutory text.").

As is relevant here, the TFA provides that "[n]o employer, . . . may . . . threaten, harass, or in any other manner discriminate against an employee . . . in reprisal for" engaging in a protected activity. 26 U.S.C. § 7623(d)(1)(A). Any person alleging such reprisal "by any person" may seek relief through the DOL complaint process. 26 U.S.C. § 7623(d)(2)(A).

Assuming, but not deciding, that Treasury is an "employer" and subject to the TFA's anti-retaliation proscriptions, sovereign immunity is not waived unless the TFA's remedial provision clearly and unequivocally allows for a suit against the Treasury. It is here that Complainant fails to demonstrate that Congress has unequivocally eliminated the Department of the Treasury's sovereign immunity.

Complainant posits that the clear and unequivocal waiver of sovereign immunity comes from the fact that the statute prohibits employers from retaliating against an employee for engaging in TFA-protected activity. In other words, Complainant submits the only prerequisite to jurisdiction is an employer-employee relationship. For jurisdiction to be established, as Complainant argues, it is sufficient to show that the Department of the Treasury employs Complainant.

Complainant mistakenly conflates two distinct sections of the TFA: the section on retaliation, which does prohibit employers from retaliating against an employee for engaging in TFA protected activity, and a separate enforcement section that authorizes any person alleging such reprisal [under § 7623(d)(1)(a)] "**by any person**" may seek relief through the DOL complaint process. 26 U.S.C. § 7623(d)(2)(A) (emphasis added). Assuming, but not deciding, the TFA's prohibitions against retaliation apply to Treasury as Complainant's "employer," inclusion as a regulated entity does not waive sovereign immunity from suit to enforce alleged violations. The TFA authorizes such actions only against a "person" and the case law clearly supports a finding that "person" in this instance does not include Treasury.

In *Peck v. Nuclear Regulatory Commission*,[13] the ARB denied a complaint filed under the ERA's whistleblower protection provisions, a similarly constructed statute as the TFA,[14] concluding that sovereign immunity is not waived where the NRC was not specifically included in the remedy section of the statute, in spite of the agency being enumerated elsewhere in a list of covered employers.[15] The ARB held that the term "person" as used in the enforcement section of the ERA anti-retaliation provisions "is a term of art that generally excludes the federal government," absent a specific showing to the contrary. *Peck*, ARB No. 17-062, at 5.

[13] ARB No. 17-062 (Dec. 19, 2019).

[14] The ERA generally protects employees in the nuclear power industry who speak out about nuclear power hazards. The procedural regulations implementing the ERA are found at 29 C.F.R. Part 24. The ERA provides that "any employee who believes that he has been discharged or otherwise discriminated against by any person may file a complaint with the Secretary of Labor." 42 U.S.C. §5881(b)(1).

[15] *Peck*, ARB No. 17-062, at 12.

The United States Court of Appeals for the Fourth Circuit affirmed the ARB's order in *Peck* in a published decision issued on April 30, 2021.[16] The Fourth Circuit found the ERA contains no explicit waiver of sovereign immunity with respect to whistleblower claims against the United States, to include those against the NRC, and the NRC's inclusion as a regulated entity in the substantive provisions of the statute was not sufficient to find Congress waived sovereign immunity for purposes of enforcement. *Peck*, 996 F.3d at 230. The Fourth Circuit's analysis in *Peck* applies equally here. There is no explicit waiver of sovereign immunity in the text of the TFA, the Treasury is not included in any provisions defining "person," and it is not mentioned in the remedy provisions.[17]

Complainant is employed by the IRS, a bureau of the Department of the Treasury. He is suing Treasury for actions he alleges violate the anti-retaliation provisions of the TFA. Assuming, but not deciding, that Treasury is an "employer" subject to the Act's proscriptions prohibiting retaliation against its employees, it is not a "person" for purposes of the Act's enforcement provisions that would allow Complainant to proceed with this administrative action seeking relief for such violations.

Ultra Vires Exception To Sovereign Immunity

An exception to federal sovereign immunity, an ultra vires claim requires a Complainant to allege a government official acted without legal authority or failed to perform a purely ministerial act. Thus, the exception only applies where a claim is brought against a government employee and not the sovereign. *See generally Larson v. Domestic & Foreign Com. Corp*. 337 U.S. 682, 689 (1949). Assuming, but not deciding, that the ultra vires exception applies to administrative proceedings such as this, Complainant names only the Department of the Treasury and not an individual employee. Accordingly, I reject the argument that ultra vires exception to sovereign immunity applies here.

The Administrative Procedure Act Exception to Sovereign Immunity

The Administrative Procedure Act does provide for judicial review of an agency action in a court of the United States seeking relief other than for money damages.[18] However, the ARB

[16] "Waiving sovereign immunity is a legislative, not a judicial, prerogative. And the legislature has not exercised that prerogative here." *Peck*, 996 F.3d at 234.

[17] The TFA refers, in different provisions, to "employer," "person," and "employee prevailing," but does not define "employer" or "person." The TFA provides, in pertinent part, that "[n]o **employer**, or any officer, employee, contractor, subcontractor, or agent of such employer, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment (including through an act in the ordinary course of such employee's duties) in reprisal for" engaging in a protected activity. 26 U.S.C. § 7623(d) (emphasis added). The provisions on enforcement action allow a person alleging reprisal "by **any person**" to seek relief through the DOL complaint process. 26 U.S.C. § 7623(d)(2)(A) (emphasis added). Finally, the remedies section specifies only that remedies apply to "[a]n **employee prevailing**." 26 U.S.C. § 7623(d)(3) (emphasis added).

[18] Section 702 of the Administrative Procedure Act provides, in pertinent part, that "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to **judicial review** thereof. **An action in a court of the United States** seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official

has held this provision inapplicable to administrative proceedings. In *Mull v. Salisbury Veterans Admin. Med. Ctr.*, ARB No. 09-107, ALJ No. 2008-ERA-008 (ARB Aug. 31, 2011), the ARB held that Section 702 of the APA "applies only to the judiciary and is not applicable to administrative agency tribunals."[19] *Mull*, ARB No. 09-107, slip op. at 5.

Administrative law judges of the U.S. Department of Labor are bound by ARB precedent that is directly applicable and not reversed or superseded. The ARB's holding in *Mull* is on point, has the force of law, and is controlling in this matter. The APA exception to sovereign immunity is inapplicable in this administrative proceeding brought against the Department of the Treasury under the provisions of 26 U.S.C. § 7623(d), and I reject Complainant's argument to the contrary.

ORDER

Congress has not unequivocally waived the Department of the Treasury's sovereign immunity under the TFA. Finding no other basis upon which to vest this tribunal with jurisdiction, Complainant's June 4, 2021 complaint must be dismissed. Accordingly, as this tribunal lacks jurisdiction, the above captioned complaint filed by James W. Tindall against the United States Department of the Treasury under 26 U.S.C. § 7623(d), and pending before the United States Department of Labor, is hereby DISMISSED.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party." 5 U.S.C. § 702 (emphasis added).

[19] *See generally Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989) (declaring that "[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.").

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of the administrative law judge's decision.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1979.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1979.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. § 1979.110(a).

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1979.110. Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1979.109(c) and 1979.110(a) and (b).

IMPORTANT NOTICE ABOUT FILING APPEALS:

The Notice of Appeal Rights has changed because the system for online filing has become mandatory for parties represented by counsel. Parties represented by counsel must file an appeal by accessing the eFile/eServe system (EFS) at https://efile.dol.gov/ EFILE.DOL.GOV.

Filing Your Appeal Online

Information regarding registration for access to the new EFS, as well as user guides, video tutorials, and answers to FAQs are found at https://efile.dol.gov/support/.

Registration with EFS is a two-step process. First, all users, including those who are registered users of the former EFSR system, will need first create an account at login.gov (if they do not have one already). Second, if you have not previously registered with the EFSR system, you will then have to create an account with EFS using your login.gov username and password. Once you have set up your EFS account, you can learn how to file an appeal to the Board using the written guide at https://efile.dol.gov/system/files/2020-10/file-new-appeal-arb.pdf and/or the video tutorial at https://efile.dol.gov/support/boards/new-appeal-arb. Existing EFSR system users will not have to create a new EFS profile.

Establishing an EFS account should take less than an hour, but you will need additional time to review the user guides and training materials. If you experience difficulty establishing your account, you can find contact information for login.gov and EFS at https://efile.dol.gov/contact. If you file your appeal online, no paper copies need be filed with the Board.

You are still responsible for serving the notice of appeal on the other parties to the case and for attaching a certificate of service to your filing. If the other parties are registered in the EFS system, then the filing of your document through EFS will constitute filing of your

document on those registered parties. Non-registered parties must be served using other means. Include a certificate of service showing how you have completed service whether through the EFS system or otherwise.

Filing Your Appeal by Mail
Self-represented (pro se) litigants may, in the alternative, file appeals using regular mail to this address:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W., Room S-5220,
Washington, D.C., 20210

Access to EFS for Other Parties

If you are a party other than the party that is appealing, you may request access to the appeal by obtaining a login.gov account and EFS account, and then following the written directions and/or via the video tutorial located at:

https://efile.dol.gov/support/boards/request-access-an-appeal

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After an appeal is filed, all inquiries and correspondence should be directed to the Board.

Service by the Board

Registered e-filers will be e-served with Board-issued documents via EFS; they will not be served by regular mail. If you file your appeal by regular mail, you will be served with Board-issued documents by regular mail; however, you may opt into e-service by establishing an EFS account, even if you initially filed your appeal by regular mail.

SERVICE SHEET

Case Name: **Tindall_v_US_Department_of_Tre_**

Case Number: **2021TAX00005**

Document Title: **DECISION AND ORDER DISMISSING COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION**

I hereby certify that a copy of the above-referenced document was sent to the following this 4th day of March, 2022:

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