U.S. Department of Labor

Office of Administrative Law Judges
90 Seventh Street, Suite 4-800
San Francisco, CA 94103-1516

(415) 625-2200
(415) 625-2201 (FAX)

Issue Date: 28 June 2019

CASE NO.: 2019-CFP-00002

In the Matter of:

ANJALI SACHDEV,
Complainant,

vs.

WELLS FARGO BANK, N.A.,
Respondent.

Appearances: Anjali Sachdev
Pro Se

John A. Berg, Esq.
Bradley J. Krupicka, Esq.
For Respondent

Before: Evan H. Nordby
Administrative Law Judge

DECISION AND ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

This proceeding arises from claims under the Consumer Financial Protection Act of 2010 ("CFPA"),[1] and the Sarbanes-Oxley Act of 2002 ("SOX").[2] Anjali Sachdev ("Complainant") seeks damages from Wells Fargo Bank ("Respondent") alleging that, in 2006, Respondent terminated Complainant in retaliation for raising concerns about Respondent's sales practices. Between 2014 and 2016, reports about Respondent's allegedly unlawful activities appeared in the news,[3] and at some point during this time Complainant became convinced that she may have suffered a legal wrong. On December 4, 2018 Complainant filed a complaint with the

[1] 12 U.S.C. § 5567 (2018).
[2] 18 U.S.C. § 1514A (2010).
[3] The year for this is given as December 28, 2013 even though this event is placed chronologically after an event purported to have occurred on January 2, 2014; this Court assumes that the Complainant intended to write 2014. (CX F p. 2.) "CX" indicates a Complainant's exhibit; and, "EX" an Employer's exhibit.

Occupational Safety and Health Administration ("OSHA"), which was declared untimely.[4] Complainant requested a hearing.[5]

For the reasons below, I grant the Respondent's Motion to Dismiss.

I. PROCEDURAL HISTORY

On December 4, 2018, Complainant filed a whistleblower retaliation complaint with OSHA.[6] Complainant alleged that Respondent had terminated her in retaliation for raising concerns about allegedly unethical and unlawful sales practices, accusing Respondent of violating the CFPA and the SOX.[7] On December 19, 2018, OSHA dismissed the complaint as untimely, stating that Complainant failed to file within 180 days of her termination as required by the CFPA,[8] the SOX,[9] and regulations implementing these statutes.[10] (EX 4 p. 1.) Complainant objected to OSHA's decision and requested a hearing on January 17, 2019. (EX 3 p. 1.) Following assignment of this case to me, Respondent filed a motion to dismiss, *see* 29 C.F.R. § 18.70(c), maintaining that the OSHA complaint was untimely.[11] Complainant filed a response to the motion re-affirming her contention that equitable tolling or estoppel, collectively known as doctrines of equitable modification, should be applied to her case.[12]

II. SUMMARY OF THE EVIDENCE

On April 4, 2005, Complainant began her employment with Respondent. (CX F p. 1.) According to Complainant, Respondent's agents pressured her to make sales to customers using tactics that Complainant felt were unethical and potentially in violation of industry regulations. Complainant communicated these concerns to agents of Respondent including the branch manager, the regional manager, and the ethics hotline. (*Id.*) Complainant's manager "rebuked" Complainant for not meeting sales targets, and placed Complainant on informal counseling for failing to lock her computer on a lunch break. (EX 3 p. 2; CX B p. 2.) Complainant was warned that she was at risk for being fired for not meeting sales targets and not complying with the demands of management, and was advised to take short term disability so that her manager could replace her.[13] On October 1, 2005, Complainant was informed that her position had been filled, following an extended sick leave of four to six weeks. (CX F p. 2.) Complainant was invited to

[4] EX 4 p. 1.
[5] EX 3 p. 1.
[6] EX 4 p. 1.
[7] EX 3 p. 6.
[8] 18 U.S.C. § 1514A(b)(2)(D) (2010).
[9] 12 U.S.C. § 5567(c)(1)(A) (2018).
[10] *E.g.* 29 C.F.R. Part 1980 (2018).
[11] *See* Mot. to Dismiss (April 19, 2019).
[12] Resp. to Wells Fargo Mot. to Dismiss (April 19, 2019).
[13] Resp. to Wells Fargo Mot. to Dismiss (April 19, 2019).

apply to other positions, but did not believe that Respondent genuinely wanted to employ her. Despite many applications, Complainant was offered no other positions by Respondent. (*Id*.)

On June 6, 2006, Complainant received a letter from her Store Manager, which told her that she was currently on "unapproved leave." (CX D p 1.) The letter further states that:

> [i]t is very important that you speak with me by 5:00 PM on June 16, 2006 to discuss your immediate return to work. If I do not hear from you by this time I will have no other choice but to assume you have decided to voluntarily terminate your employment with Wells Fargo.

(*Id*.)

Complainant consulted an attorney in 2006, but took no legal action. (EX 3 p. 2.) From October 2006 to January 2014, Complainant worked on a commission basis for Allstate, Port of Tacoma, and Amity University; applied for financial industry jobs including at BECU and other credit unions; and worked as an instructional assistant. (CX F p. 1.) On January 28, 2014, Complainant submitted an unemployment claim to the State of Washington which listed Respondent as one of her last employers. Respondent filed a job separation statement that was left blank save for stating that the reason for the employee separation was "lack of work", and that the "last day of work" was May 30, 2012. (*Id.*)

Complainant explains that "[i]n 2015, the news broke about the long-term companywide fraud investigations. Reports of their company-wide pressure and cross-selling goals… reminded me of what I had been through. Thousands of employees recounted similar experiences to me." (EX 3 p. 2.) At some time in September 2016, following Congressional hearings involving Respondent's CEO making statements about its sales policies, Complainant became convinced that she may have suffered a legal wrong as a result of her termination.[14] (*Id*.) On March 16, 2017, Complainant was identified as a putative class member in a class action lawsuit, involving similarly situated employees allegedly terminated in retaliation for activities protected by the FCPA. (EX 5 p. 1; CX F. p. 2.)

On August 24, 2018, Complainant received a settlement offer from Respondent in response to the pending class action lawsuit.[15] (CX F p. 3) Complainant rejected the offer. (EX 3 p. 3.) On December 4, 2018, Complainant filed a whistleblower retaliation complaint with

[14] After hearing what was stated by the Respondent's CEO at these hearings, Complainant reports "I realized I had been severely wronged and how we were being pressurized to make sales the repercussions that were deep and pervasive. This fraudulent practice had been going on when I joined [Respondent] in 2005. That is why my reports to the Regional Manager and HR were never addressed. HR found a way to trick me and squeeze me out of my job."

[15] The full proposed settlement agreement, including confidentiality language and non-admissions clause language denying wrongdoing that appears contrary to Wells Fargo's public admissions, is in the record. (EX 3 p. 9-18)

OSHA, alleging that Respondent violated the CFPA and the SOX by terminating her. (EX 4 p. 1.) As noted above, the complaint was dismissed as untimely. Complainant requested a hearing with the Office of Administrative Law Judges on January 17, 2019. (EX 3 p. 1.)

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Legal Standard for Motion to Dismiss

When analyzing a motion to dismiss, the judge views the evidence in the light most favorable to the non-moving party and then determines whether there are any genuine issues of material fact. *E.g. Ubinger v. CAE International*, ARB No. 07-083, ALJ No. 2007-SOX-36 (ARB Aug. 27, 2008). Summary decision is proper "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *E.g. Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Accordingly, a moving party may prevail by pointing to the "absence of evidence proffered by the nonmoving party." *Ubinger*, ARB No. 07-083, ALJ No. 2007-SOX-36.

2. The Complaint is Untimely

A Complainant seeking whistleblower protection under either the CFPA or the SOX must first file an administrative complaint with OSHA not later than 180 days after the date on which the violation occurs; under the SOX, the complaint must be filed 180 days after the date on which the violation occurs, or after the date on which the employee became aware of the violation. *Coppinger-Martin v. Solis*, 627 F.3d 745, 749 (9th Cir. 2010); 18 U.S.C. § 1514A(b)(2)(D); 12 U.S.C. § 5567(c)(1)(A). For purposes of the SOX, a complainant is considered aware of the violation when they become aware of the actual injury, e.g. termination of employment, as opposed to awareness of the potentially implicated legal right. *Coppinger-Martin*, 627 F.3d at 749. In whistleblower cases, statutes of limitation run from the date an employee receives "final, definitive, and unequivocal notice" of an adverse employment decision. *Butler v. Anadarko Petroleum Corp.*, ARB No. 09-047, ALJ No. 2009-SOX-1 (ARB Feb. 17, 2011); *see also Turin v. Amtrust Financial Services, Inc.*, ARB No. 11-062, ALJ No. 2010-SOX-18 (ARB Mar. 29, 2013).

To make a prima facie claim under the whistleblower protection provision of the SOX or the CFPA, an employee's complaint must allege that 1) the employee engaged in protected activity, 2) the employer knew, actually or constructively, of the protected activity, 3) the employee suffered an unfavorable personnel action, and 4) the circumstances raise an inference that the protected activity was a contributing factor in the personnel action. *Coppinger-Martin*, 627 F.3d at 749; *Turin*, ARB No. 11-062, ALJ Nos. 2010-SOX-18.

On the facts here, there is more than one possible date on which the Complainant might have had notice of her termination so as to start the statute of limitations clock. On September

15, 2005, Respondent's manager advised Complainant to go onto short-term disability leave, because the manager wanted to fill her position. Complainant returned to her job on October 1, 2005, to find that her position had been filled. Respondent told Complainant that she could still seek other positions in the company. This is not an "unequivocal" notice of termination, as Respondent left open the possibility that Complainant could find another position. *See Snyder v. Wyeth Pharmaceuticals*, ARB No. 09-008, ALJ No. 2008-SOX-55 (ARB Apr. 30, 2009) (holding that a communication is not final notice for the purpose of the statute of limitations where that communication holds out possibility that a complainant can take some action to avert termination).

Another possible date is the June 16, 2006 deadline imposed by the communication Respondent sent on June 5, 2006. Though it appears that Complainant did not work another day for Respondent after September 15, 2005, this communication leaves open the possibility that Complainant could speak with Respondent before the deadline and avoid final termination. There is no evidence that Complainant responded to this communication. By June 16, 2006, without having spoken with the Store Manager, Complainant was left with no possibility of getting her job back, as specified in the June 5 email.

Another possible date is the May 30, 2012, which is stated by Respondent as the date of termination in its response to Complainant's unemployment benefits claim. However, given the June 5, 2006 letter, and the fact that Complainant did not work for Respondent for seven years prior to this date, Respondent having stated the May 30, 2012 date appears to be a clerical error. Moreover, Complainant was filing for unemployment benefits, which shows knowledge that she was not then employed by Wells Fargo or any other employer. *See Coppinger-Martin*, 627 F.3d at 749 (end of employment is the "actual injury").

Complainant argues that October 24, 2018, the date of the settlement offer in the private class action, was the date of Respondent's "acknowledgment of the termination of [her] employment." (EX 3 p. 1.) Complainant does not present facts or argument that she did not know of her termination by Wells Fargo until October 24, 2018. In the intervening several years she worked for employers other than the Respondent, applied for other jobs, and filed for unemployment benefits.

Even viewing the evidence in the light most favorable to the non-movant, the evidence shows that her termination did occur, and that Complainant was aware of her termination, in 2005 or 2006. Whether it occurred after Complainant went on disability leave and had her position filled, or – most likely on this evidentiary record – once she received the June 5, 2006 letter and failed to respond, does not matter to a finding of untimeliness given that the OSHA claim was filed in 2018.

3. Legal Standard for Equitable Estoppel and Equitable Tolling

Complainant contends that, even if the claim is untimely, equitable modification[16] should extend the filing period. Complainant, who appeared *pro se*, did not explicitly address any of the tolling factors the Board has recognized. I am mindful of the duty to remain impartial and refrain from becoming an advocate for a *pro se* litigant. *Zavaleta v. Alaska Airlines, Inc.*, ARB No. 15-080, ALJ No. 2015-AIR-16 (ARB May 8, 2017). I am equally mindful that "we construe complaints and papers filed by *pro se* [complainants] liberally in deference to their lack of training in the law and with a degree of adjudicative latitude." *Ubinger*, ARB No. 07-083, ALJ No. 2007-SOX-36 (quotation marks omitted). An ALJ "has a responsibility to assist *pro se* litigants by liberally interpreting their complaints and holding them to lesser standards than legal counsel in procedural matters." *Zavaleta*, ARB No. 15-080, ALJ No. 2015-AIR-16.

Equitable modification of the statute of limitations is a defense to all federal statutes of limitations, even those expressly contained within a given cause of action, unless tolling would be inconsistent with the statute's legislative purpose. *Ellis v. City of San Diego*, 176 F.3d 1183, 1189 n. 3 (9th Cir. 1999). The SOX's statute of limitations provision is subject to equitable tolling, *see Reid v. The Boeing Co.*, ARB No. 10-110; ALJ No. 2009-SOX-27 (ARB Mar. 30, 2012), as is the CFPA's.[17] *See Reid*, ARB No. 10-110; ALJ No. 2009-SOX-27. A complainant seeking to invoke the doctrine of equitable modification faces a high burden:

> Federal courts have typically extended equitable relief only sparingly. We have allowed equitable [modification] in situations where the complainant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass.

Irwin v. Dept. of Veterans Affairs, 498 U.S. 89, 96 (1990).

a. Legal Standard for Equitable Tolling

[16] As noted above, equitable modification includes two similar sub-doctrines: equitable tolling and equitable estoppel. *E.g. Rhodes v. Guiberson Oil Tools Div.*, 927 F.2d 876, 877 (5th Cir. 1991).

[17] "The time for filing a complaint may be tolled for reasons warranted by applicable case law. For example, OSHA may consider the time for filing a complaint equitably tolled if a [complainant] mistakenly files a complaint with the another agency instead of OSHA within 180 days after becoming aware of the alleged violation" 29 C.F.R. § 1980.103(d); *accord* 29 C.F.R. § 1985.103(d) (CFPA); *see also* 81 Fed. Reg. 14374, 14377 (Mar. 17, 2016) (CPFA final rule preamble).

Equitable tolling "focuses on the plaintiff's excusable ignorance of the employer's discriminatory act." *Rhodes v. Guiberson Oil Tools Div.*, 927 F.2d 876, 877 (5th Cir. 1991). Equitable tolling does not depend on the defendant's wrongful conduct; rather, it focuses on whether the plaintiff's delay was excusable. *Coppinger-Martin*, 627 F.3d at 750. "To be entitled to equitable tolling, a complainant must act diligently, and the untimeliness of the filing must result from circumstances beyond his control." *Tardy v. Delta Air Lines*, ARB No. 16-077, ALJ No. 2015-AIR-26 (ARB Oct. 5, 2017); *Romero v. The Coca Cola Co.*, ARB No. 10-095, ALJ No. 2010-SOX-021, slip op. at 4 (ARB Sept. 30, 2010). If a reasonable complainant would not have known of the existence of a possible claim within the limitations period, then equitable tolling will serve to extend the statute of limitations for filing suit until the complainant can gather what information he needs. *Coppinger-Martin*, 627 F.3d at 750. A complainant who possesses sufficient information to establish a prima facie claim within the statute of limitations period cannot invoke equitable tolling to extend the period. (*Id*.)

Applying this principle, there are four situations in which the ARB has found that equitable tolling is proper: 1) "When the [respondent] has actively misled the plaintiff respecting the cause of action," 2) "the [complainant] has in some extraordinary way been prevented from asserting his rights," 3) "the [complainant] has raised the precise statutory claim in issue but has mistakenly done so in the wrong forum," or 4) "the employer's own acts or omissions have lulled the plaintiff into foregoing prompt attempts to vindicate his rights." *Reid*, ARB No. 10-110; ALJ No. 2009-SOX-27; *Komatsu v. NTT Data, Inc.*, ARB No. 16-069, ALJ No. 2016-SOX-24 (ARB Mar. 13, 2018); *Tardy v. Delta Air Lines*, ARB No. 16-077, ALJ No. 2015-AIR-26 (ARB Oct. 5, 2017). This is not an exhaustive list of situations where equitable modification is available, but courts "have generally been much less forgiving in receiving late filings where the complainant failed to exercise due diligence in preserving his legal rights." *Halpern v. XL Capital, Ltd.*, ARB No. 04-120, ALJ No. 2004-SOX-54 (ARB Aug. 31, 2005).

b. Legal Standard for Equitable Estoppel

Equitable estoppel "examines the [respondent's] conduct and the extent to which the [complainant] has been induced to refrain from exercising his rights." *Rhodes*, 927 F.2d at 877. A finding of equitable estoppel rests on the consideration of a non-exhaustive list of factors, including: 1) the plaintiff's actual and reasonable reliance on the defendant's conduct or representations, 2) evidence of improper purpose on the part of the defendant, or of the defendant's actual or constructive knowledge of the deceptive nature of its conduct, and 3) the extent to which the purposes of the limitations period have been satisfied. *Johnson v. Henderson*, 314 F.3d 409, 414 (9th Cir. 2002).

4. Equitable Tolling Does Not Apply

I find that Complainant has not established facts that justify equitable tolling.

First, Complainant contends that the seriousness of the underlying allegedly unlawful activity justifies the application of equitable tolling to this case. Complainant points out that Respondent is a very large financial institution that allegedly utilized its substantial resources to systematically engage in unlawful behavior, and to cover up that behavior. This behavior included "thousands" of adverse employment actions affecting other similarly situated people.[18] Complainant contends that the seriousness in and of itself constitutes an extraordinary circumstance that justifies the application of equitable tolling.

Second, Complainant argues that the complexity of the underlying activities resulted in her being excusably ignorant of the adverse employment actions that were occurring. Complainant contends that Respondent systematically suppressed her ability to make her claims by "pull[ing] the wool over eyes of the enforcement agencies, lawmakers, and investors."[19] Respondent concealed the very unlawfulness of their activity, and Complainant was unaware of the fact that she was engaged in protected activity or that she had a cause of action until, at the earliest, the Congressional hearings in 2016.

I am bound to apply the precedent. In *Ubinger*, the ARB directly rejected the contention that equitable tolling should apply because of the seriousness of the complaint. *Ubinger*, ARB No. 07-083, ALJ No. 2007-SOX-36 (holding that the complainant's complaint about policies in violation of Homeland Security requirements do not justify application of equitable tolling). The ARB found that if seriousness of the complaint could justify the application of equitable tolling, "limitations periods would have no legal force." (*Id.*)

Furthermore, Complainant may have been uncertain whether she had suffered a legal wrong until 2015, or 2016 when she saw the Congressional hearings. But Complainant provides no evidence that she genuinely did not know that she had been terminated, or that she was specifically misled or induced by Respondent or its agents into thinking that she had not been legally wronged. In fact, Respondent was concerned enough to contact a lawyer about this matter in 2006.[20] The ARB, considering an assertion that the "complexity of the banking framework made it impossible for [the complainant] to conclude that he was entitled to whistleblower protections and it was only when the news reported fraud in the industry that he learned that his termination could be protected," declined to apply equitable tolling to a CFPA whistleblower retaliation case involving a different bank. *Brofford v. PNC Investments LLC*, ALJ No. 2017-CFP-2 (ALJ Sep. 21, 2017), *aff'd*, ARB No. 18-003 (ARB Feb. 14, 2019).

[18] EX 3 p. 2.
[19] Response to Wells Fargo Motion to Dismiss dated April 19, 2019.
[20] While no legal action was commenced following this meeting, ignorance of the law is "generally not a factor that warrants equitable modification." *Jones v. First Horizon National Corp.*, ARB No. 09-005, ALJ No. 2008-SOX-60 (ARB Sept. 30, 2010).

Complainant does not present evidence that she raised this claim in a timely fashion, but in the wrong forum. There is no evidence in the record that Complainant acted "with all due diligence" in making or attempting to make her claim in a timely fashion. *In re Global Horizons, Inc.*, ALJ No. 2006-TLC-00013 (ALJ 2006).[21] Complainant therefore has failed to raise an issue of material fact that might justify the equitable tolling of the statute of limitations.

5. Equitable Estoppel Does Not Apply

Neither has Claimant established equitable estoppel. Complainant argues that Respondent deliberately deceived Complainant into thinking that her termination was based on incompetence rather than a refusal to cooperate in Respondent's allegedly unlawful acts. The reason given for Complainant's manager's reprimand was that Complainant was not meeting the sales targets and not complying with the demands of management. Complainant also received a formal reprimand for causing "loss exposure"[22] by leaving her computer screen unlocked in the lunch hour.

I find that that this justification offered by Complainant for equitable estoppel is inadequate. Complainant had sufficient information to establish a prima facie case. A showing of deception as to motive supports equitable estoppel only if it conceals the very fact of discrimination; equitable estoppel is not warranted where an employee is aware of all of the facts constituting discriminatory treatment but lacks direct knowledge of the employer's subjective discriminatory purpose.[23] *Smale v. Torchmark Corp.*, ARB No. 09-012, ALJ No. 2008-SOX-57 (ARB Nov. 20, 2009).

Therefore, I find no issue of material fact raised by the Complainant that justifies the application of equitable estoppel.

IV. ORDER

As the Complainant's opposition to the Respondent's Motion to Dismiss did not create a triable issue of fact with regards to timeliness, a threshold question, Respondent's Motion to Dismiss is GRANTED.

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[21] In the recent Administrative Review Board decisions affirming equitable tolling, the complainant diligently pursued their claim immediately after their injury, but filed their claim in the wrong forum. *Brooks v. Agate Resources, LLC*, ARB No. 2017-0033, ALJ No. 2016-SOX-00037 (ARB Mar. 25, 2019) (per curiam). Alternatively, the complainant relied on assurances from the respondent that the adverse employment decision would not actually occur, but in fact ended up occurring. *Jenkins v. CSX Transportation, Inc.*, ARB No. 13-029, ALJ No. 2012-FRS-73 (ARB May 15, 2014).

[22] "Loss exposure" is defined by Respondent as a potential loss created by a failure to follow policy or procedure. Loss exposure incidents can lead to informal counseling, and if repeated, to escalating sanctions up to termination. (CX D p. 1.)

[23] *See also Brofford v. PNC Investments LLC*, ARB No. 18-003, ALJ No. 2017-CFP-2 (ARB Feb. 14, 2019) (holding that pretextual firing and allegations of complex underlying unlawful activity not enough to invoke any kind of equitable modification).

The hearing set for August 12, 2019, at the United States Bankruptcy Court in Seattle, WA is VACATED and the case is DISMISSED. *See* 29 C.F.R. § 18.70(c). All other pending motions are DISMISSED as moot.

SO ORDERED:

EVAN H. NORDBY
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: https://dol-appeals.entellitrak.com. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

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. § 1980.110(a). Your Petition should identify the legal conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

When you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. *See* 29 C.F.R. § 1980.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

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. §§ 1980.109(e) and 1980.110(b). 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. § 1980.110(b).