



Issue Date: 24 July 2008

CASE No. 2008-SOX-38

MARK FREDRICKSON,
Complainant

V.

AMERICAN EAGLE AIRLINES, INC.,
Respondent

**DECISION AND ORDER GRANTING RESPONDENT'S
MOTION FOR SUMMARY DECISION AND DISMISSING COMPLAINT**

On May 23, 2008, the undersigned issued a prehearing order giving a due date of June 6, 2008 for the Respondent to submit his motion for summary decision in this matter, and June 16, 2008 for Complainant's response to that motion. On June 9, 2008, the undersigned received Respondent's motion for summary decision and supporting brief. On June 23, 2008, this office notified Complainant to find out if a response was forthcoming. Complainant explained that he just received Respondent's motion on June 25, 2008 because it was delivered to the wrong address. This office requested him to put something in writing explaining why his response would be late, along with the response, within five business days. On July 10, 2008, after no reply, the undersigned issued an order to show cause why Complainant's case should not be dismissed for failure to respond to this order. On July 18, 2008, Complainant submitted a one-page document stating, "Complainant Mark Fredrickson hereby respectfully moves that Respondent American Eagle's motion for summary judgment be dismissed" with no supporting statement, or other statement in opposition to the motion for summary decision.

Under 20 C.F.R. § 18.6(a)¹ and the Federal Rules of Civil Procedure a motion must:

“(A) be in writing unless made during a hearing or trial;

(B) state with particularity the grounds for seeking the order; and

¹ Any application for an order or any other request shall be made by motion which, unless made during a hearing or trial, shall be made in writing unless good cause is established to preclude such submission, shall “state with particularity the grounds therefor, and shall set forth the relief or order sought.

(C) state the relief sought.” Fed. R. Civ. P. 7(b) on which § 18.6(a) is based.

This motion does not respond to Respondent’s summary decision motion and is defective in its failure to “state with particularity the grounds for seeking the order” that he raised in his responsive motion. Therefore,

IT IS ORDERED that Respondent’s motion for summary decision is GRANTED for Complainant’s failure to respond to Respondent’s motion and for not stating with particularity the grounds for seeking the order.

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THOMAS F. PHALEN, JR.
Administrative Law Judge

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. *See* 29 C.F.R. § 1980.110(a). The Board’s address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; 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(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(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, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. The Petition must also be served on 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.

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(c). Even if you do file a Petition, 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 after the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).