U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 11 June 2008

CASE NO.: 2008-SOX-00037

In the Matter of:

J. EDWARD HAMMOND,
Complainant,

vs.

CITRIX SYSTEMS, INC.,

and

CITRIX ONLINE L.L.C.,

and

SCOTT ALLEN,

and

DOES 1 through 50,
Respondents.

ORDER GRANTING IN PART AND DENYING IN PART RESPONDENTS' MOTION FOR SUMMARY DECISION AND DISMISSING RESPONDENTS SCOTT ALLEN AND DOES 1 - 50

This matter arises under the employee protection provisions of the Corporate and Criminal Fraud and Accountability Act, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A ("Sarbanes-Oxley," "SOX," or "the Act").

This matter is presently before me on Respondents' Motion for Summary Decision. Briefs have been filed by both parties.

PROCEDURAL BACKGROUND

On March 7, 2008, Complainant filed a formal complaint against Respondents under the Act with the Department of Labor, Occupational Safety and Health Administration ("OSHA"). On March 20, 2008, following an investigation, OSHA dismissed the complaint, finding it was

untimely in that Complainant filed his complaint more than 90 days after the alleged adverse action. On April 17, 2008, Complainant filed a timely appeal of OSHA's determination with the Office of Administrative Law Judges.

On April 29, 2008, I issued a notice of hearing setting this case for trial on July 28, 2008, in Santa Barbara, California. On May 28, 2008, Respondents filed a motion for summary decision ("MSD"), along with a memorandum of points and authorities ("Pts. and Auth."), several declarations and various exhibits. On June 9, 2008, Complainant filed by telefax an opposition to Respondents' motion for summary decision.

FACTUAL BACKGROUND

Complainant was employed by Respondent Citrix from October 2004 to July 16, 2007. (Declaration of John Shuman in Support of Motion for Summary Decision ("Shuman Decl.") Exhibit G ¶ 3). Complainant first contacted legal counsel on September 6, 2007, 54 days after his termination from Citrix regarding alleged violations of Sarbanes-Oxley and wrongful termination. (Declaration of Denise Kale in Support of Motion for Summary Decision ("Kale Decl." Exhibit F at 7). On September 26, 2007, Complainant's counsel sent a letter to Citrix's Chief Executive Officer, which enclosed a draft Complaint for violations of Sarbanes-Oxley Act by Complainant against Respondents. (Kale Decl. ¶ 3 and Exhibit A). The letter stated that "complaints for violation of Sarbanes-Oxley must be filed with OSHA within 90 days of termination" and "[Complainant's] Complaint must be filed no later than October 14, 2007." (Kale Decl. Exhibit A). The letter also invited Respondents to "enter into a tolling agreement in order to negotiate a settlement without jeopardizing Mr. Hammond's right to file a Complaint." *Id.*

On October 9, 2007, Complainant's counsel, Jennifer Raphael, sent a letter to general counsel for Citrix and Citrix Online, Denise Kale. (Kale Decl. ¶ 5). This letter stated that Complainant's time to file with OSHA expired on October 12, 2007, and included a 30 day statute of limitations tolling agreement. (Kale Decl. Exhibit B). On October 11, 2007, Complainant, Citrix and Citrix Online entered into the 30 day tolling agreement through their counsel. (Kale Decl. ¶ 6 and Exhibit C). Respondent Scott Allen was not a party to this tolling agreement. (Declaration of Scott Allen in Support of Motion for Summary Decision ("Allen Decl.") ¶ 2; Kale Decl. Exhibit C).

This 30 day tolling agreement stated that "the parties have therefore mutually agreed that any statutes of limitations applicable to [Complainant's] claims 15 U.S.C. 7201 *et seq.* are to be tolled for a thirty (30) day period beginning on October 10, 2007." (Kale Decl. Exhibit C). The agreement, drafted by Ms. Raphael (Kale Decl. ¶ 6 and Exhibit B), also includes a clause stating "the Parties acknowledge that this Agreement is the product of joint drafting among them and hereby declare their intent that, if any provision of this Agreement be deemed ambiguous, such provision shall be construed equally against all Parties." (Kale Decl. Exhibit C).

The parties were unable to coordinate schedules for mediation of the settlement within the 30 days, and on or about November 12, 2007, Complainant, Citrix and Citrix Online entered into a second tolling agreement. (Kale Decl. ¶ 7 and Exhibit D). Respondent Scott Allen was not

a party to this tolling agreement. (Allen Decl. ¶ 2; Kale Decl. Exhibit D). This second tolling agreement, drafted by Ms. Raphael (Kale Decl. ¶ 7), stated that "the parties have therefore mutually agreed that any statutes of limitations applicable to [Complainant's] claims 15 U.S.C. 7201 *et seq.* are to be tolled for a four-month period beginning on October 10, 2007, up to and including March 10, 2008." (Kale Decl. Exhibit D at 1). Just as in the first tolling agreement, the second tolling agreement included a clause stating "the Parties acknowledge that this Agreement is the product of joint drafting among them and hereby declare their intent that, if any provision of this Agreement be deemed ambiguous, such provision shall be construed equally against all Parties." (Kale Decl. Exhibit D).

ISSUES FOR DETERMINATION

1. Is this complaint time-barred in regards to respondents Scott Allen and Does 1 through 50, such that summary decision is proper?
2. Are the tolling agreements valid and enforceable to toll the statutory filing period in this complaint?
3. If the tolling agreements are valid and enforceable, was the filing period tolled to February 10 or March 10, 2008 as against remaining Respondents Citrix and Citrix Online?

THE STANDARD FOR GRANTING SUMMARY DECISION

The standard for granting summary decision or judgment is set forth at 20 C.F.R. 18.40(d), which is based on Federal Rule of Civil Procedure (FRCP) 56. Summary judgment is appropriate "if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show there is no genuine issues as to any material fact and that a party is entitled to summary decision." 20 C.F.R. 18.40(d). 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 showing the existence of a genuine issue for trial. *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150 (2000); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

The moving party need not provide evidence negating elements on which it does not bear the burden at hearing. It only needs to identify those portions of the record which "demonstrate the absence of a genuine issue of material fact." *Celotex Corp., v. Catrett*, 477 U.S. 317, 323 (1986). If the non-movant fails to establish the existence of an element that is essential to his case and on which they bear the burden of proof at hearing, there is no genuine issue of material fact and the movant is entitled to summary judgment. *Id.* Credibility, doubts and reasonable inferences are resolved in favor of the non-moving party, but "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party," summary judgment is appropriate. *Matsushita*, 475 U.S. at 586.

DISCUSSION

A complaint alleging retaliation in violation of the Sarbanes-Oxley Act must "be commenced not later than 90 days after the date on which the violation occurs." 18 U.S.C. § 1514A(b)(2)(D). Complainant was discharged on July 16, 2007 (Complaint ¶ 37; Kale Decl. ¶ 2), and filed his complaint on March 7, 2008, 235 days after his termination. (Points and Authorities in Support of Motion for Summary Decision ("Pts. and Auth.") at 1).

Respondents argue that Summary Decision is proper because the complaint was untimely as to Scott Allen and Does 1 through 50 because they were not parties to any tolling agreement and untimely as to Citrix and Citrix Online because tolling agreements are unenforceable in SOX claims, or alternatively, the agreements only tolled the filing deadline until February 10, 2008.

I. Summary decision is proper as to all SOX claims against Respondents Scott Allen and Does 1 through 50 as they are untimely and barred by the statute of limitations

Regardless of the validity of the tolling agreements in this case, Respondents Scott Allen and Does 1 through 50 were not parties to either tolling agreement. (Kale Decl. Exhibit C and D). While Complainant argues that opposing counsel's signature effectively binds Scott Allen to the tolling agreements, this simply is not the case. (Complainant's Opposition to Motion for Summary Decision ("Opp to MSD") at 9). Both tolling agreements clearly state that the agreements are made between Complainant and Citrix Online and Citrix Systems, with no mention whatsoever of Scott Allen or Does 1 through 50. (Kale Decl. Exhibit C and D). Both agreements are signed by Denise Kale, the general counsel of Citrix and Citrix Online, on their behalf. (Kale Decl. ¶ 1, Exhibit C and Exhibit D). Scott Allen is not represented by Denise Kale, rather, he is represented by John Shuman, who also represents Citrix and Citrix Online. (Shuman Decl. ¶ 1). As Ms. Kale is not Scott Allen's counsel and he is not named as a party to the tolling agreements, it does not follow that Ms. Kale's signature on the tolling agreements on the behalf of Citrix and Citrix Online would also bind Scott Allen to them. Thus, the statute of limitations for any SOX claim Complainant has against these parties has not been tolled by these agreements. Therefore, Complainant must conform with the 90 day SOX statute of limitations for any SOX claim against Scott Allen and Does 1 through 50. 18 U.S.C. § 1514A(b)(2)(D). Complainant's complaint against Scott Allen and Does 1 through 50 was filed March 7, 2008, 235 days after his discharge from Citrix. This is well over the 90 day statute of limitations provided for SOX complaints, and thus is untimely and barred by the statute of limitations.

Summary decision as to the claims against Respondent Scott Allen and Does 1 through 50 must be granted, unless there is an equitable reason to excuse its untimely filing. The standard for equitable tolling of limitations, however, is high. *Arcega v. Dickinson*, 1994 WL 139266, *4 (N.D. Cal. 1994). Restrictions on equitable tolling "must be scrupulously observed." *Dist. of the City of Allentown v. Marshall*, 657 F.2d 16, 19 (3d Cir. 1981). Equitable principles are generally unavailable to a claimant who has failed to exercise due diligence in preserving his legal rights. *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 151 (1984) (per curiam). Additionally, a complainant bears the burden of justifying the application of equitable tolling

principles. *See Wilson v. Sec'y, Dep't of Veterans Affairs*, 65 F.3d 402, 404 (5th Cir. 1995); *see also Ross v. Buckeye Cellulose Corp*., 980 F.2d 648, 661 (11th Cir. 1993).

The principle of equitable tolling "may be appropriate only when '(1) the defendant has actively misled the plaintiff respecting the cause of action, (2) the plaintiff has in some extraordinary way been prevented from asserting his rights, or (3) the plaintiff has raised the precise statutory claim in issue but has mistakenly done so in the wrong forum.'" *Dist. of the City of Allentown*, 657 F.2d at 20 (quoting *Smith v. Am. President Line, Ltd*., 571 F.2d 102, 109 (2nd Cir. 1978)).

A. Misled into Inaction

Equitable tolling may apply when "the defendant has actively misled the plaintiff respecting the cause of action." *Dist. of the City of Allentown*, 657 F.2d at 20. There is no evidence to support the contention that Respondents Scott Allen and Does 1 through 50 had any contact with Complainant following his dismissal from Citrix, let alone evidence that they actively misled Complainant regarding his SOX claim against them.

B. Prevented from Asserting Rights

Equitable tolling may be appropriate when "the plaintiff has in some extraordinary way been prevented from asserting his rights." *Id.* Complainant had a ten page draft complaint prepared several weeks prior to the filing deadline. (Kale Decl. Exhibit A at 1). Complainant chose to forego filing this complaint at the advice of his attorney, who assured him that entering into private tolling agreements with Citrix and Citrix Online preserved his rights to file a SOX complaint with OSHA through March 10, 2008. (Shuman Decl. Exhibit G ¶ 63). Complainant "voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent." *Link v. Wabash R. Co.*, 370 U.S. 626, 633-634 (1962). Thus, Complainant's choice to forego filing a complaint against Scott Allen and Does 1 through 50 within the statue of limitations upon his counsel's recommendation does not constitute an "extraordinary circumstance' which might justify application of the doctrine of equitable tolling." *Brady v. Direct Mail Mgmt, Inc.*, Case No. 2006-SOX-16, p. 6 (2006) (ALJ).

C. Wrong Forum

Equitable tolling may be appropriate when "the plaintiff has raised the precise statutory claim in issue but has mistakenly done so in the wrong forum." *Dist. of the City of Allentown*, 657 F.2d at 20. The filing of the claim in the wrong forum "must also be timely before it will toll the appropriate limitations period." *Id.* This application of equitable tolling requires that Complainant had mistakenly filed his SOX complaint against Scott Allen and Does 1 through 50 by October 12, 2007 in the wrong forum. Complainant contends in his appeal that his counsel's September 26th letter to the CEO of Citrix, indicating an intent to file a SOX complaint and including an invitation to enter into a tolling agreement, constitutes "taking action" within 90 days, while that "action taken was not presented in the right forum." (Kale Decl. Exhibit F at 7). However, the doctrine of equitable tolling requires more than "taking action," it requires that the

precise statutory claim has been raised, but mistakenly in the wrong forum. *Dist. of the City of Allentown,* 657 F.2d at 20. Prior to the filing deadline, Complainant was well aware the proper forum was to file the complaint with OSHA. (Kale Decl. Exhibit A at 1 and Exhibit B at 2). The only forum that the SOX complaint against Scott Allen and Does 1 through 50 was raised was with OSHA, on March 7, 2008. (Shuman Decl. Exhibit D at 24). There was no timely SOX complaint against Scott Allen and Does 1 through 50 mistakenly raised in the wrong forum. As such, the equitable tolling exception for timely claims filed in the wrong forum does not apply.

As no equitable tolling applies, the Motion for Summary Decision as to Respondents Scott Allen and Does 1 through 50 is **GRANTED** and they are **DISMISSED** with prejudice from this case.

II. Private Tolling Agreements Are Valid and Enforceable In SOX Whistleblower Litigation

Despite willingly entering into two tolling agreements with Complainant, Respondents now argue that the filing deadline for a SOX claim cannot be tolled by a private agreement between the parties.

"[T]he time limits for filing complaints and requesting appeals in whistleblower cases are not jurisdictional." *Lotspeich v. Starke Memorial Hosp.,* ARB No. 5-72, ALJ No. 2005-SOX-14, p. 4 (ARB 2006). *See also, Moldauer v. Canadaigua Wine Co.,* ARB No. 4-22, ALJ No. 3-SOX-26. p. 5 (ARB 2005). More specifically, "the SOX's limitations period is not jurisdictional." *Levi v. Anheuser Busch Companies, Inc.,* ARB Nos. 6-102, 7-020, 8-006, ALJ Nos. 2006-SOX-37, 2006-SOX-108, 2007-SOX-55, p. 12 (ARB 2008). Thus, the SOX time limits are not prerequisites to the exercise of jurisdiction, but rather function as statutes of limitations. *Dist. of City of Allentown,* 657 F.2d at 19. Furthermore, non-jurisdictional time limits act as "merely an ordinary statute of limitations, which may be tolled." *Hughes Aircraft Company v. National Semiconductor Corporation,* 850 F.Supp 828, 830 (N.D. Cal. 1994).

The acceptance of tolling agreements for non-jurisdictional statutes of limitations is so broad that it has rarely been squarely addressed. The discussion of tolling agreements is generally limited to challenges to the sufficiency of specific agreements or as a threshold to other timeliness issues. *See e.g. Santa Theresa Citizen Action Group v. City of San Jose,* 185 Fed.Appx 695, 696 (9th Cir. 2006) (holding the language in the agreement was not sufficient to toll the statute of limitations); *GoTo.com, Inc. v. Walt Disney Co.,* 202 F.3d 1199. 1209 (9th Cir. 2000) (holding private tolling agreement between the parties barred laches defense in a copyright infringement action); *Capital Tracing, Inc. v. U.S.,* 63 F.3d 859, 862 (9th Cir. 1995) (if no applicable express tolling provision is present, then the court may invoke equitable tolling); *Siegel v. Warner Bros. Entertainment Inc.,* 542 F.Supp.2d 1098, 1115, 1136 (C.D. Cal. 2008) (determining timeliness by applying both the parties' tolling agreement and the statute of limitations to the date of accrual of the claim and the filing date); *U.S. v. Harris Trust and Savings Bank,* 390 F.2d 285, 288 (7th Cir. 1968) (holding that the tolling agreement suspended the statute of limitations in a federal estate tax action); *Hughes Aircraft Co.,* 850 F.Supp at 832 (holding that the limitations period of the Patent Act is nonjurisdictional and may be tolled by parties' agreement). Additionally, in *Keith v. Chevron,* an ALJ opined that SOX whistleblowers

and employers are "free to contract to toll the statute of limitations for federal causes of action." Case No. 2006-SOX-117, p. 9 (2006) (ALJ) (finding insufficient evidence of a tolling agreement to toll the filing deadline). I am aware of no controlling authority holding tolling agreements to be generally unenforceable or specifically unenforceable in Sarbanes-Oxley litigation.

Respondents' cite only *Szymonik v. Tymetrix, Inc.*, in support of their position that tolling agreements are inapplicable to SOX actions. Case No. 2006-SOX-50 (2006) (ALJ). In *Szymonik*, the claimant entered into a tolling agreement with his former employer four days prior to the expiration of the 90-day SOX statute of limitations. *Id.* at 2. The parties entered into the tolling agreement for the purpose of having settlement discussions, whereby the complainant agreed not to file a SOX claim, and the employer agreed not to raise a defense based on the expiration of the statute of limitations. *Id.* When settlement negotiations failed, the claimant filed a SOX complaint with OSHA, which was dismissed for being untimely. *Id.* at 1. On appeal, the employer did not raise the defense that the complaint was untimely, however, the administrative law judge ("ALJ") raised the issue of timeliness *sua sponte*. *Id.* at 4-5. The ALJ ruled that private tolling agreements were unenforceable in SOX actions because there was no indication in the language of the Act that Congress intended these agreements, and to allow private tolling agreements would thwart the legislative intent to "protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws." *Id.* at 5. Additionally, the ALJ found that tolling agreements would impede the legislative intent to grant the defendant a period of repose after the limitations period had expired. *Id.*

I find the reasoning of the *Szymonik* decision unpersuasive and respectfully disagree. The ARB has already held the SOX filing deadlines are non-jurisdictional. *Lotspeich*, ARB No. 5-72, ALJ No. 2005-SOX-14, p. 4 (ARB 2006). A powerful justification would be required to swim against the tide of all other federal courts and find tolling agreements generally invalid for a specific non-jurisdictional filing deadline. In *Szymonik* it is asserted that private tolling agreements will lessen the protections that the Sarbanes-Oxley Act provides to shareholders. *Id.* at 5. However, the shareholder protection goals of the Act as a whole are a step removed from the goals of the specific provisions protecting whistleblowers. *See* 29 C.F.R. § 1980.100. The purpose of this provision is to protect whistleblowing *employees*, which in turn promotes whistleblowing *activity*, thereby protecting shareholders. Put simply, it is whistleblowing that is supposed to alert shareholders to malfeasance, not whistleblowing litigation. Thus, while nullifying tolling agreements in SOX cases might accelerate some claims, which in turn might more quickly alert some shareholders to malfeasance, any such gain to the shareholders would likely be more than offset by the resulting chill on whistleblowing itself. Even if there was some net benefit to shareholders, it could not possibly justify creating a new procedural landmine unique to SOX cases. There is a fundamental unfairness to allowing employers to willingly enter agreements and then argue that they are invalid, thereby escaping liability from retaliating against whistleblowers. Additionally, since employers have willingly contracted to toll the statute of limitations, knowing full well the potential claims against them, it cannot be said that tolling agreements have deprived them of a period of repose. Finally, tolling agreements promote settlement before the parties become entrenched in litigation, which is both economically and socially efficient.

Taking into consideration the non-jurisdictional nature of the SOX time limits, the overwhelming case law implicitly approving of private tolling agreements, and the relevant policy considerations, I find that private tolling agreements are generally valid and enforceable in SOX whistleblower litigation.

Here, Complainant and Respondents Citrix and Citrix Online entered into valid agreements tolling the applicable deadlines for filing Complainant's claim.

III. The Tolling Agreements Were Effective Through March 10, 2008, Therefore Complainant's Claims Against Citrix And Citrix Online Were Timely Filed.

Respondents next argue that Complainant's claim is time-barred because the two tolling agreements expired on or before February 15, 2008, which was three weeks prior to the filing of the complaint. (Pts. and Auth. at 3, n. 2). The second agreement states that the filing deadline shall "be tolled for a four-month period beginning on October 10, 2007, up to and including March 10, 2008." (Kale Decl. Exhibit D). Four months following October 10, 2007 is February 10, 2008, not March 10, 2008. So, either "four month period," "October 10, 2007," or "March 10, 2008," was drafted in error. Respondents argue that contradiction be resolved in favor of the earlier date which would successfully time-bar Complainant's complaint.. (Pts. and Auth. at 3, n. 2).

Traditionally, an ambiguity in the language of a contract is construed against the drafter of that contract. *See* Restatement (Second) of Contracts § 206 (1981)., Respondents argue that this ambiguity in the end of the tolling period be construed against the Complainant, contending that the Complainant's lawyer drafted the tolling agreements. (Pts. and Auth. at 2). However, both tolling agreements contain identical clauses stating: "The Parties acknowledge that this Agreement is the product of joint drafting among them and hereby declare their intent that, if any provision of this Agreement be deemed ambiguous, such provisions shall be construed equally against all Parties." (Kale Decl. Exhibit C and D). Thus, I must construe the ambiguity equally against all parties.

The precise issue is whether the parties intended the second tolling agreement to encompass "a four-month period" beginning approximately a month prior, or "a four-month period" from the end of the first agreement and ending on "March 10, 2008." Considering only the "four corners" of the second agreement, I favor the "March 10, 2008," term because it is more direct than the term "four month period," which requires a calculation, susceptible to error.

However, in deciding this issue, I am free to consider extrinsic evidence because the terms of the contract are contradictory, therefore patently ambiguous. *See Gilliam v. Nevada Power Co.*, 488 F.3d 1189, 1194 (9th Cir. 2007). Here, the relevant extrinsic evidence is the first tolling agreement, which was executed on October 11, 2007, and tolled the filing deadline for 30 days. (Kale Decl. Exhibit C). The second tolling agreement was signed November 6th and 12th, 2007. When considered in light of the first agreement, the term "a four-month period" is harmonious with "up to and including March 10, 2008" because March 10, 2008 was four months in the future and the first agreement already covered the period from October 10, 2007, through at least November 9, 2007. Assuming the parties did intend the second agreement to

extend four months into the future, only the superfluous backdating term "beginning on October 10, 2007" is inconsistent. There is no similar explanation for Respondents' proposal that the parties intended the agreement to end on February 10, 2008. Therefore I find, by a preponderance of the evidence, that the parties intended to extend the tolling agreement through March 10, 2008, and the "beginning on October 10, 2007" term was simply accounting for the first agreement. The tolling agreement was valid and enforceable through March 10, 2008.

As Citrix and Citrix Online were parties to both tolling agreements, the statute of limitations for any SOX claim Complainant has against these two parties was tolled until March 10, 2008. Because Complainant filed his complaint on March 7, 2008, I find that his claims as to Citrix and Citrix Online were filed within the time provided by the statute of limitations and the tolling agreement, and thus are not untimely. Therefore, there is no need to address the issue of whether equitable tolling applies to those Respondents. The Motion for Summary Decision as to Respondents Citrix and Citrix Online is denied.

ORDER

For the reasons stated above:

IT IS ORDERED that Respondents' Motion for Summary Decision is **DENIED** regarding claims against Respondents Citrix and Citrix Online, and **GRANTED** regarding claims against Respondents Scott Allen and Does 1 through 50. Respondents Scott Allen and Does 1 through 50 are **DISMISSED** with prejudice from this action.

A

GERALD M. ETCHINGHAM
Administrative Law Judge

San Francisco, California

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).