



Issue Date: 22 September 2014

Case Number: 2014-STA-00002

In the Matter of:

BRUCE TREUR,

Complainant

v.

MAGNUM EXPRESS, INC.,

Respondent.

DECISION AND ORDER

This proceeding arises under the Surface Transportation Assistance Act (“STAA”), as amended by Section 1536 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (“9/11 Act”), Pub. L. No. 110-53. (Aug. 3, 2007) and the applicable regulations issued thereunder at 29 C.F.R. Part 1978. The STAA and implementing regulations protect employees in the trucking industry from discharge, discipline or discrimination regarding pay, terms or privileges of employment because, *inter alia*, they refused to operate a vehicle due to “a reasonable apprehension of serious injury to the employee or the public because of the vehicle’s hazardous safety or security condition[.]” 49 App. U.S.C. § 31105(a)(1)(B)(ii).

I. BACKGROUND

On February 15, 2013, Complainant Bruce Treur (“Complainant” or “Treur”) filed a complaint with the Occupational Safety and Health Administration (“OSHA”) under the STAA alleging retaliatory discharge by Respondent Magnum Express, Inc. (“Respondent” or “Magnum”). OSHA issued an initial determination in the matter on September 4, 2013 in which it found Respondent had presented clear and convincing evidence that Complainant’s refusal to report to work was unreasonable. On October 16, 2013, Complainant appealed OSHA’s determination to the Office of Administrative Law Judges (“OALJ”). I issued a Notice of Docketing and Order to Meet and Confer on December 13, 2013.

On January 2, 2014, counsel for the parties filed a jointly proposed scheduling plan which I adopted in a Prehearing Order and Scheduling Notice issued January 9, 2014. The hearing in the case was scheduled therein to commence on April 29, 2014, in Davenport, Iowa.

On April 15, 2014, counsel for Complainant filed a Motion for Continuance of Hearing Date, Pretrial Submissions Deadline and for Entry of Briefing Schedule. On April 16, 2014, I granted the motion and continued the hearing until Thursday, July 24, 2014 in Davenport, Iowa.

On April 15, 2014, Respondent filed a Motion for Summary Decision. Complainant filed his Brief in Support of Resistance to Respondent's Motion for Summary Decision on May 6, 2014. A motion for leave to file a reply brief, and an opposition thereto, were filed by the parties, and on June 16, 2014, I denied Respondent's Motion for Summary Decision.

On July 10, 2014, I denied Respondent's Motion for Leave to Amend Witness List finding that the anticipated testimony of the named witness was not relevant to the issues before me.

I presided over the formal hearing in this matter on July 24, 2014 in Davenport, Iowa. At the conclusion of the hearing, I ordered post hearing briefs to be filed no later than Monday, August 25, 2014. On August 18, 2014, the parties filed a Joint Motion to Amend Deadline for Submission of Post-Hearing Briefs, and I thereafter granted an extension of 15 days following the parties' receipt of the transcript to file post-hearing briefs. Complainant filed his closing brief on September 5, 2014; and Respondent filed its closing brief on September 8, 2014.

II. SUMMARY OF THE EVIDENCE

A. WITNESS TESTIMONY

Bruce Treur

Treur testified that he was 44 years old, a high school graduate, and was in the U.S. Air Force for approximately six years following graduation during which time he drove a truck and loaded and unloaded airplanes. Tr. 22-23. He obtained his commercial driver's license in 1992 but did not begin working as a truck driver until 1997. Tr. 23. He has driven "all types of trucks" including "a cab-over all the way to every kind of conventional trucks there are out there today." Tr. 23-24. He has driven tractor-trailers pulling "almost every type of trailer, except for a tanker." Tr. 24. The first time he ever drove a straight truck was when he began working for Magnum. *Ibid.* He has driven in all 48 states and Canada, and driven through winter weather in places "where weather conditions can change dramatically." *Ibid.*

Complainant had been unemployed for about five months when he applied for a job at Magnum after seeing an advertisement on Craigslist. Tr. 25. He had a telephone interview with Chris McCormick who later became his dispatcher at Magnum. Tr. 25-26. McCormick and Magnum's offices were located in Plainfield, Indiana, approximately five hours from Davenport. Tr. 26. Treur was offered the job by McCormick after the telephone interview. *Ibid.* He was told the job consisted of driving a straight truck from Davenport to Des Moines, unloading part of his load there, continuing on to Omaha, unloading the remainder of his load there, and returning the empty truck to Davenport. *Ibid.* The product he was carrying consisted of pharmaceuticals delivered to Wal-Mart. Tr. 27. Treur was paid \$15 an hour, plus time and one-half for anything over 40 hours. Tr. 28. Complainant began working for Magnum in October 2012 and spent one day in Plainfield, Indiana for orientation. Tr. 29.

Treur drove the same truck every day during his employment and described it as a 6-wheeled vehicle similar to “a very large U-Haul that you would use to move if you’re going to move your own furniture out of your house” which was equipped with air brakes. Tr. 29-30. According to Complainant, the truck did not handle well during thunderstorms and high wind conditions and he had to reduce his speed “dramatically” over concerns that the vehicle would flip over. Tr. 30. Treur testified:

With the wind, with the way the wind was blowing from north to south –at 35, 40 miles per hour] as they already said it was doing in Des Moines when I called Magnum Express, I was concerned that when the wind hit the passenger’s side of the vehicle, it would blow me over onto the driver’s side of the vehicle. If luckily I wouldn’t land on another car that would be next to me, that means I would probably land on the driver’s side window. More than likely, I would be injured, if not knocked unconscious from hitting the roadway.

The vehicle also was white, and I was very concerned that if nobody had seen me tip over and I ended up in a ditch or somewhere else, because of the near whiteout conditions that were already occurring in Des Moines, Iowa, and Omaha, Nebraska, I was scared that I would end up in the ditch and nobody would see me there and I would literally die in the ditch.

Tr. 31.

Complainant’s typical schedule involved meeting Eric Haut, the driver coming from Indiana, approximately 5 to 10 miles from his house at the Ryder truck facility in Davenport around 5:00 pm, then driving the truck to Des Moines to make his first delivery, continuing on to Omaha to make the final delivery, and then returning the empty truck to the Ryder truck facility in Davenport. Tr. 32; 85-6. On his return from Omaha, Treur arrived at the Rider truck facility generally between 4:00 and 6:00 a.m. and would leave the truck for Haut who would take the truck to Indianapolis to pick up the next load and start the process all over again. Tr. 32-33. When Treur picked up the trip in the evenings, it would be half empty because Haut would unload half of the truck at the first stop in the leg in Southern Davenport before driving to the Ryder truck facility. Tr. 34. The drive to Des Moines took approximately 2 to 2 ½ hours, where he would spend approximately a half to one hour unloading product in central Des Moines before driving another 3 ½ to 4 hours where he would spend an hour or two unloading product. Tr. 34-35. Complainant worked Monday through Friday and his route took him along I-80 west from Davenport to Omaha and east on the return trip. Tr. 35.

Treur’s regular practice after returning between 4:00 and 5:00 a.m. was to sleep until around 10:00 or 11:00 a.m., have lunch with his wife and then sleep again until around 4:00 or 5:00 p.m. Tr. 36. He made his regular trip on December 18, 2012 and on Wednesday, December 19th, checked the weather forecast on the Iowa DOT website when he got up. Tr. 36-37. According to Complainant:

They had already said that the weather at that point at 11:00 a.m. was already bad in Omaha and Des Moines, Iowa, and that I should not be traveling – nobody should be traveling even at 11:00 a.m. on those road conditions because the road conditions were bad in Des Moines and Omaha, Nebraska, even at 11:00 a.m.

.....

The weather forecast from the day before that I had seen was already predicting that – they had already posted that there was going to be blizzard warnings for Wednesday. And when I got up Wednesday morning for work like I normally do, there were blizzard warnings posted for starting at 6:00 p.m. in Davenport, Iowa.

Tr. 37.

Sometime between 12:00 Noon and 1:00 p.m. after he talked to Chris McCormick the first time, Treur faxed information he printed from the Iowa DOT website to McCormick. Tr. 38-39. The weather in Davenport when he faxed the documents to McCormick was “fine.” Tr. 39. On average, Treur usually reached Des Moines after leaving Davenport sometime between 7:30 and 8:00 p.m. Tr. 44. Based on the information he reviewed, the storm was moving across Iowa from west to east. Tr. 45. According to Complainant:

[T]he reason why I called Magnum Express at 11:00 a.m. instead of waiting until, say, 4:30 in the afternoon right before I was scheduled to leave, I was actually calling Magnum Express to tell them that the weather was already bad in Omaha and Des Moines and that I was doing that so that they would – we could figure out a way to get the load delivered either late or they could find someone else to deliver the load in my place.

Ibid. Had he started his route that evening, he would have been driving “into the weather conditions and then at that point start looking for a motel, which between [Davenport] and Des Moines, Iowa, there isn’t that many motels.” Tr. 46. Because his load was a “high-value product” Treur would not have risked leaving the truck in an unsecure location at a hotel and “would have had to have driven all the way to Omaha, Nebraska . . .” *Ibid.* Treur had other concerns about the trip including that the truck only had a 50-gallon fuel tank, it was not equipped with a sleeper, if the weather got extremely cold the fuel would gel and the truck could stall causing him to park somewhere along the road, and he “would literally freeze to death.” Tr. 47-48.

Treur’s first communication with Magnum was on December 19th by text with Chris McCormick at approximately 11:00 a.m. to tell him the weather conditions were already bad in Omaha and Des Moines and he was not able to go out that night to make his deliveries. Tr. 49-50. McCormick called him shortly after Treur and told Complainant he “needed to go out and try to make the deliveries.” Tr. 50. Complainant responded that he “was not comfortable driving that particular vehicle into blizzard conditions.” *Ibid.* McCormick, who was in Plainfield, Indiana, told Treur that the only way he could tell the customer deliveries could not be made was if I-80 was closed; after their conversation that Complainant faxed the printouts from the Iowa DOT website to McCormick so he would have something to send to the customer. Tr. 51. After speaking with McCormick, who was also in Plainfield, Indiana, Bob Smith, Magnum’s safety director, called Treur back. Tr. 52. Complainant told Smith that “because [the straight truck] did

not handle safely on those types of weather conditions . . . [he] was not going to go out and travel that night.” *Ibid.* Smith responded that Treur could go out and “[w]hen the road conditions turned bad and [he] did not feel comfortable driving anymore, then [he] could look for a motel, stop, and stay there.” Tr. 53. At approximately 2:00 or 3:00 p.m. CST, McCormick called Complainant and asked once again if he was willing to drive his route that day, and Treur told him “no, taking the straight truck out into those weather conditions was not something [he] felt safe doing.” Tr. 54-55. In response, McCormick told Treur that his employment with Magnum was terminated. Tr. 55.

On cross-examination, Complainant testified that his decision not to drive his route on the evening of December 19th was “based on the actual road conditions at the time that [he] first spoke to Mr. McCormick . . .” Tr. 63-64. He acknowledged that one of the documents, the “News and Info” for December 19, 2012 from the IDOT website which he faxed to Magnum about noon indicating that travel was not advised in much of Iowa beginning at 8:00 p.m. that night contained no time reflecting when it was issued or what the current travel conditions were. Tr. 68-9; JX 3. Another document, a “National Weather Service Alerts for Des Moines, IA” that he faxed showed that a blizzard warning remained in effect from 6:00 p.m. CST that day until 6:00 p.m. CST the following day, but did not show any current information about snowfall, temperature or other actual conditions at the time in Des Moines. Tr. 69-74; JX 5.

The documents Complainant faxed to Magnum did not show the then *current* weather conditions anywhere between Davenport, Iowa and Omaha, Nebraska. Tr. 76. Treur drove the same truck over the same route every day during the two months he worked for Magnum, was very familiar with the route, and he knew where exits, fuel stations and a few motels were located. Tr. 77-78. When asked whether there was any evidence of snow conditions as they existed between 11:00 a.m. and 1:00 p.m., Treur testified:

No.

Any information about the wind at the time you printed this?

No, it was just predicting.

Is there any information about the forecasted temperature low for that evening when you printed this?

No, no.

Tr. at 72.

I based that decision on printing out – which is what I printed off here – that it had already – the weather service in Des Moines, Iowa had already said by this document that there was already a blizzard warning in effect. Because of the vehicle I was driving, which was the straight truck, I was not – I didn’t feel it was safe to drive that truck into this blizzard because that’s what this document states.

Tr. at 73; see also Tr. at 77 (“You don’t drive a straight truck into blizzard warnings.”).

According to what we've admitted here today, me personally, yes, I do think we do. We have blizzard warnings up for Des Moines, Iowa, and Omaha, Nebraska. And as a professional driver, even if you get word that there is a blizzard where you're going to, you don't drive it into the blizzard. You don't risk driving that vehicle into a storm, hoping the blizzard isn't bad, because if the National Weather Service has listed a blizzard warning, that means they're tell you, don't drive into that blizzard.

Tr. 79. Complainant did not believe there was anything mechanically wrong with the truck, and he never talked to either Smith or McCormick about the truck's poor handling in wind conditions. Tr. 80. He never mentioned the truck's poor handling in certain conditions, like wind, because the company was 'renting the truck and we weren't going to keep it." *Id.* On the day in question, he never talked to either Smith or McCormick about security concerns because he was carrying pharmaceuticals. Tr. 81; 90. However, he testified that the company used a straight truck rather than a semi-trailer because even though less economical, it more carefully secured the pharmaceutical products. Tr. 91-2. The door on the back of the truck was locked with a padlock. Tr. 92. Treur believed there were approximately a dozen exits on the trip between Davenport and Des Moines, a part of the route, which normally took two hours and fifteen minutes to two hours and a half I-80. *Id.* The exits were spaced from 5 to 20 miles apart. Tr. 92-93. Complainant knew there was a blizzard warning for Des Moines between the time he first contacted Magnum around 11:00 a.m. to say he was not willing to drive that night and when he was fired at around 2:00 p.m. by Chris McCormick, but did not know anything about the actual weather conditions during that time. Tr. 93.

Tammy Treur

Tammy Treur is 43 years of age and has worked in the trucking industry since 2004 in various positions including "[o]rientation manager, compliance manager, DOT files, hiring, firing, HR, and dispatch." Tr. 96-97. She was home on December 19, 2012 and was present during part of the conversations her husband had with Magnum employees. Tr. 97. She heard her husband tell someone there that he was not able to go out that night due to the storm and during a later conversation ask "What do you mean by I'm terminated." Tr. 98. She looked at the weather information on the Iowa DOT website and understood that the roads were going to be unpassable and no one should be on them. *Ibid.* Tammy Treur testified with respect to the information she and her husband learned from looking at the Iowa DOT website around 11:00 a.m. that:

Des Moines and west had been hit by a storm, snowstorm; there was winds 50 to 60 miles per hour; and that the DOT were not even allowing plows on the road because of the wind and the snow, how thick it was coming down [between Omaha and Des Moines heading toward Davenport].

Tr. 104. Other than that, she had no information about the actual weather conditions between Des Moines and Davenport from 11:00 a.m. to 2:00 p.m. Tr. 106. There no inclement weather, no snowfall, between Des Moines and Davenport at 11:00 a.m. Tr. 106-07. The roads between Des Moines and Omaha were "already snow-covered and impassable" at 11:00 a.m. Tr. 108.

Robert G. Smith

Robert Smith has been the safety director for Magnum Express for almost 16 ½ years and oversees compliance with all Department of Transportation rules, drug and alcohol testing, accident investigations, and cargo claim investigations. Tr. 112. He also sets hiring standards, audits logs, has the final say on hiring, handles risk management, insurance for the company and is in charge of Magnum's security system. *Ibid.* Smith started as safety director 30 days after Magnum first went into business. Tr. 113. The company owns approximately 18 trucks, most of which are day cabs (semi tractor without a sleeper used for local deliveries), but one is a straight truck similar to the truck rented by Magnum and used by Treur. *Ibid.* Magnum employs about 48 drivers and generally operates within a 250-mile radius of Indianapolis. Tr. 113-14.

Smith was the safety director for about two years at High Cube Express prior to working for Magnum. Tr. 114. His duties at High Cube Express were basically the same as at Magnum, but he was not responsible for insurance or security there. *Ibid.* Smith also worked for Burlington Motor Carriers of Daleville, Indiana for about 11 years, starting as a weekend dispatcher, moving to full-time dispatcher, and then becoming safety director. Tr. 115. Smith drove a straight truck and delivered produce for Ace Fruit Company for about 2 ½ to 3 years. Tr. 116. He also worked as a loader, telling other drivers what to put on the produce trucks, and was subsequently promoted to general manager there. *Ibid.* Smith also owned his own tractor and trailer for several years (a cab-over sleeper with a 40-foot "reefer") and drove to and from Michigan and northern Indiana hauling onions and potatoes. Tr. 117.

In the very beginning of his employment at Magnum, Smith delivered freight on weekends when drivers were unavailable. Tr. 118. He has maintained a commercial driver's license since about 1995, and has driven straight trucks, day cab tractors, cab-over tractors with sleepers, conventional tractors with sleepers, and pulled grain trailers, 53-foot box trailers and reefer trailers. *Ibid.*

According to Smith, safety always comes first at Magnum, they have never terminated a driver because they didn't want to drive in bad weather, and he talked to drivers regularly about winter driving. Tr. 119. One of his favorite sayings is "If you're driving in bad weather, go slow or don't go." *Ibid.* When working at Burlington, he always advised the drivers that if they had to put chains on their trucks, they should chain up long enough to get to a safe location. *Ibid.*

No driver has ever been disciplined or terminated by Respondent for not driving or starting a route because of bad weather. Tr. 120. Smith described one incident during the winter of 2009 where a driver in Ohio could not deliver a load because of snow and ice at his location, but another driver 50 miles away was able to deliver the load. *Ibid.* He also described an incident in Henderson, North Carolina where three of Magnum's drivers were unable to get to the terminal because of a sudden ice storm and stated that none of them were disciplined. *Ibid.* The driver in Ohio who was unable to make his delivery because of snow and ice was likewise not disciplined. Tr. 121. Magnum relies on its drivers to let them know when travel conditions are not safe. Tr. 122.

Smith reviewed Treur's application when he was hired by Magnum in October 2012 to drive the "night shift" on a "dedicated straight truck run." Tr. 124. Treur was an at will employee with no employment contract. *Ibid.* Complainant's job was to meet the other Magnum driver at the Ryder truck facility in Davenport and then make deliveries in Des Moines and Omaha five days a week on Monday through Friday. Tr. 124-25.

On the day Treur was fired, Chris McCormick came to Smith and informed him that Complainant was refusing to report to work due to a weather forecast. Tr. 125. McCormick was then responsible for recruiting, maintenance and supervising local drivers. *Ibid.*

Smith received a telephone call from Treur about 15 to 20 minutes after he spoke with McCormick. Tr. 126. Smith testified:

He told me that he had talked to Chris McCormick and that Chris wanted him to report to work. Mr. Treur explained to me what the weather forecast was and when it was supposed to hit. We talked about showing up to work; assessing the situation and going from there; talked about what would happen if he decided to try it; and what the options were out over-the-road. And then the last thing I remember telling him, that if he did not report to work and assess the situation at that time, he would possibly be terminated.

Tr. 127. Treur told Smith the storm was supposed to hit Davenport around 6:00 or 7:00 p.m. that night, and Smith responded that Treur needed to report to work, wait to see what the weather was at that time, and call back if the conditions were unsafe. *Ibid.* Smith also told Treur that if he did go out to take extra clothing, water food and a blanket in case he got caught out in the storm and had to stop. Tr. 128. Treur told Smith if the truck had a sleeper he might go out "but he was not going to sleep over the steering wheel in the seat [of the straight truck]." *Ibid.* Smith told Treur that if he started his trip and ran into bad weather, he could turn around and come back or find a motel and Magnum would pay for it. *Ibid.* Smith asked Treur what the weather conditions were like in Davenport at that time, and Treur replied that they were "fine." *Ibid.* Had Treur told him that conditions were so bad that he could not get out of his driveway, Smith "would have told him to stay home and be safe and we would handle the situation." Tr. 129.

Smith and Treur did not discuss anything regarding the fuel capacity of the truck he drove during their conversation. Tr. 130. Smith testified that "[p]rofessional drivers, in any type of winter weather, will never let their fuel tanks get below a half a tank of fuel just because they don't know when there could be an accident in front of them and they're stuck on the highway, what the conditions are; they've got to pull over into a rest area." *Ibid.* He noted that Treur drove a dedicated route every day and would thus know where the fuel stops were along the route. *Ibid.* Prior to concluding their conversation, Smith informed Treur "that he needed to report to work, assess the situation, and then notify us then what the conditions were, and that if he did not report to work, he was subject to termination. Tr. 132-33. It was Smith's impression that Treur "was not leaving the house that day." Tr. 133. Smith talked to McCormick about his conversation with Treur, and he anticipated that McCormick and Treur would talk again before the matter was resolved. *Ibid.* Smith was subsequently copied on an email McCormick sent to Treur informing him that he had been terminated by Magnum. Tr. 134; JX 13. The email was sent at 1:34 p.m.

from Indiana which is on Eastern Daylight Time, which would have been 12:35 p.m. in Davenport which is on Central Standard Time. Tr. 135. Smith subsequently followed up on McCormick's email with a letter to Treur telling him that he had been terminated and directing him to return all company property to Magnum. Tr. 137; JX 12. According to Smith, Magnum terminated Treur's employment because "[h]e failed to report to work and assess the conditions at the time." Tr. 138.

On cross-examination, Smith testified that when he referred to Treur reporting to work, [h]e was supposed to report to work at the Ryder facility and meet the other driver where the truck was located." Tr. 139. According to Smith, if Treur had reported to work at 5:30 p.m. that day and "said he felt it was too bad to go out on the road, we would not have terminated him." Tr. 140. He testified that Magnum had a drivers' handbook but no written safety policy. Tr. 147. Magnum has a written policy on progressive discipline. Tr. 150. Treur was never previously disciplined while employed by Magnum and was a good employee. Tr. 152. Smith has terminated two or three other drivers during his employment at Magnum for refusing to report to work because of weather forecasts, but it was "a rare situation where they wouldn't at least report to work." Tr. 157-58. According to Smith, Magnum considers a failure to report to work is analogous to failing a drug test and is not suitable for "progressive" discipline. Tr. 158. Smith has been the safety director at Magnum since the start and to his knowledge there has never been an instance where a driver has refused to come to work and assess the weather conditions at that time who has not been fired. Tr. 159.

B. DOCUMENTARY EVIDENCE

Joint Exhibits

The parties submitted the following 20 joint exhibits ("JX") that were admitted into evidence:

JX 1

JX 1 is Respondent's Response to Complainant's Request for Admissions in which Respondent admits: the distance between the Ryder rental facility in Davenport and the drop-off point in Des Moines, Iowa is approximately 162 miles," JX 1 at 3; the distance between the Des Moines drop-off point and the Omaha drop-off point is approximately 140 miles; the attached National Weather Service Alert for Des Moines for December 19, 2012 through December 20, 2012 and Iowa Department of Transportation Traveler Information for December 19, 2012 are authentic; and Chris McCormick and Bob Smith were located in Indiana at all times relevant to this matter. *Id.* at 4.

JX 2

Withdrawn

JX 3

JX 3 is a copy of “New and Info” for December 19, 2012 from the IDOT website. JX 3. IDOT advised that travel by motorists across the majority of Iowa was not advised from 8:00 P.M. through noon on December 20, 2012 due to forecasted blizzard conditions in the state. *Id.* at 1. The National Weather Service “issued a blizzard warning at 6 p.m. [December 19] and continuing through 6 p.m. Thursday [December 20].” *Id.*

JX 4

JX 4 is a “Quality Controlled Local Climatological Data Hourly Observations Table”¹ for De Moines, Iowa prepared by the National Oceanic & Atmospheric Administration’s (“NOAA”) National Climate Data Center. The Table includes weather condition information for December 19, 2014.

JX 5

JX 5 is a copy of the “National Weather Service Alerts for Des Moines, IA” in which the National Weather Service stated a blizzard warning remains in effect from 6 P.M. this evening to 6 P.M. CST Thursday.” JX 5 at 1.

JX 6

JX 6 is Complainant’s 2012 and 2013 W-2s from Worldwide Transportation Logistics, Inc. JX 6.

JX 7

JX 7 is Complainant’s W-2 from Magnum Express, Inc.

JX 8

JX 8 is Complainant’s 2012 W-2 from Ruan Transport Corp.

JX 9

JX 9 is Complainant’s 2012 W-2 from the Iowa Workforce Development Unemployment Insurance Division.

JX 10

JX 10 is Complainant’s 2013 W-2 from Commercial Transport, Inc.

¹ The Hourly Observations Table, prepared by the National Climactic Data Center of the National Oceanic and Atmospheric Administration (“NOAA”), contains multiple abbreviations, the meanings of which are not always readily apparent. A PDF document explaining the format and abbreviations used in the Hourly Observation Table may be viewed on NOAA’s website at: <http://cdo.ncdc.noaa.gov/qclcd/qclcddocumentation.pdf>.

JX 11

JX 11 is a “Quality Controlled Local Climatological Data Hourly Observations Table” for Davenport Municipal Airport in Davenport, Iowa prepared by NOAA’s National Climate Data Center. The Table includes weather condition information for December 19, 2014 indicating the following:

- From 12:52 am to 12:15 p.m., the temperature ranged from 32 to 36 degrees Fahrenheit; the skies were overcast; there was moderate mist in the area; wind speeds ranged from 0 to 7 mph; relative humidity varied from 79% to 89%; and there was no measurable precipitation.
- From 12:52 p.m. to 3:52 p.m., the temperature averaged 36 degrees Fahrenheit; the skies were overcast with broken or scattered clouds; there was moderate haze; relative humidity ranged from approximately 79% to 82%; and there was no measurable precipitation;
- From 4:52 p.m. until 9:13 p.m., the temperature averaged 36 degrees Fahrenheit; the skies were overcast with broken or scattered clouds; conditions alternated between light to moderate rain, rain with mist and unknown precipitation with mist until there was evidence of a thunderstorm in the vicinity at 9:19 p.m.; relative humidity ranged from 85% to 92%; wind varied from 13 to 17 mph; and there was a total of .06 inches of precipitation (rain) during that period.
- Snow did not begin falling in Davenport until 9:44 p.m.; between then and 10:36 p.m. there was a total accumulation of 0.08 inches of snow; winds ranged from 14 to 21 mph; and relative humidity varied from 85% to 92%.
- Precipitation changed to freezing rain at 10:50 p.m. and total accumulation between then and 11:36 p.m. amounted to 0.08 inches.

JX 12

JX 12 is Complainant’s termination letter dated December 19, 2012 signed Bob Smith, Risk Management, stating “[t]his letter is written confirmation that effective this date, December 19, 2012, your employment with Magnum Express, Inc. has been terminated.” JX 12 at 1.

JX 13

JX 13 is an e-mail written by Chris McCormick, Magnum Express, Fleet Manager, sent on December 19, 2012 at 1:34 P.M. in which Mr. McCormick stated “Bruce Truer [sic] has been terminated for refusing dispatch due to possible bad weather.” JX 13 at 1.

JX 14

JX 14 is a copy of a Driver's Daily Log for Eric Haut dated December 19, 2012 for Vehicle Number 604453 for Magnum Express, Inc. JX 14 at 1. The Driver Vehicle Inspection Report states regarding Truck Number 604453 that there is "no defect or deficiency in this motor vehicle as would be likely to affect the safety of its operation or result in its mechanical breakdown." *Id.*

JX 15

JX 15 is Complainant's Response to Respondent's Request for Admissions. Complainant admits therein that he was hired by Magnum as a driver on October 25, 2012, that his driving duties for Magnum involved driving a 26-foot straight truck from Davenport, Iowa to Des Moines, Iowa, to Omaha, Nebraska and returning to Davenport nightly. JX 15 at 1. He further admits that he would meet the truck he was to drive at approximately 6:00 p.m. Central Standard Time ("CST") each evening Monday through Friday at a Ryder rental facility in Davenport, and that, on December 19, 2012, he contacted Chris McCormick and told him that he did not want to drive that evening because the National Weather Service had issued a blizzard warning that would be in effect in the area that day at 6:00 p.m. CST. *Id.* at 2. Treur also admits that McCormick told him to report to work as scheduled and assess the weather conditions at that time. *Ibid.* Treur further admits that he subsequently called Bob Smith and had a telephone conversation during which he told Smith he did not want to drive that evening because of the weather forecast and Smith also told Complainant to report to work as scheduled and that if the driving conditions were unsafe, Complainant should stop and get a motel room at Magnum's expense. *Id.* at 2-3. Complainant admits that Smith told him during their conversation if he did not report for work, his employment at Magnum would be terminated. *Id.* at 3. Treur admits that at approximately 12:15 p.m. CST that day, McCormick called him and also informed Treur that he would be fired if he did not report to work, and Complainant told McCormick he would not report to work that evening. *Id.* at 4.

JX 16

JX 16 is Complainant's Answers to Interrogatories in which Treur alleges he was terminated unlawfully for failing to drive in unsafe conditions. JX 16 at 5.

JX 17

JX 17 is a copy of Bruce Treur's deposition. JX 17. The deposition was taken on February 28, 2014 in Davenport, Iowa. *Id.* JX 17 also contains the following exhibits used for the deposition: Complainant's Response to Request for Admissions, JX 15; Complainant's 2012 W-2s from Worldwide Transportation Logistics, Inc., JX 6 at 1; Complainant's 2013 W-2s from Worldwide Transportation Logistics, Inc., JX 6 at 2; Complainant's W-2 from Commercial Transport, Inc., JX 10; Complainant's W-2 from the Iowa Workforce Development Unemployment Insurance Division, JX 9; and Complainant's Answers to Interrogatories, JX 16.

JX 18

JX 18 is a copy of e-mails between Respondent's Safety Director Bob Smith, Risk Management, Magnum, and Eric Haut dated February 26, 2014. JX 18.

JX 19

JX 19 is a copy of a Magnum Express time sheet for, employee, Eric B. Haut and a Magnum Express Earning Statement for Mr. Haut. JX 19. The Time Sheet shows a total of 69 hours worked for the weekend ending in December 22, 2012 and the Earning Statement shows the net pay amount for the period ending on December 22, 2012 as \$912.14. *Id.* at 1.

JX 20

JX 20 is a copy of Tammy Treur's deposition. JX 20. The deposition was taken on February 28, 2014 in Davenport, Iowa. *Ibid.*

III. LAW

“To prevail on a STAA claim, the complainant must prove by a preponderance of the evidence that he engaged in protected activity; that he was subjected to adverse employment action; and that his protected activity was a contributing factor in that adverse action.” *Fink v. R&L Transfers, Inc.*, ARB No. 13-018, ALJ No. 2012-STA-006, slip op. at 3 (ARB Mar. 19, 2014) citing *Salata v. City Concrete, LLC*, ARB Nos. 08-101, 09-104; ALJ Nos. 2008-STA-012, -041; slip op. at 9 (ARB Sept. 15, 2011); *Williams v. Domino's Pizza*, ARB No. 09-092, ALJ No. 2008-STA-052, slip op. at 5 (ARB Jan. 31, 2011); *Riess v. Corp.-Vulcraft-Texas, Inc.*, ARB No. 08-137, ALJ No. 2008-STA-011, slip op. at 4 (ARB Nov. 30, 2010). Protected activity includes refusing to operate a vehicle because of “a reasonable apprehension of serious injury to the employee or the public because of the vehicle's hazardous safety or security condition[.]” 49 U.S.C. § 31105(a)(1)(B)(ii). Such activity is a contributing factor if it “alone or in combination with other factors, affected in some way the outcome of the employer's decision.” 77 FR 44127 (July 27, 2012); *Benjamin v. Citationshares Management, LLC*, No. 12-029, 2013 WL 6385831 (ARB Nov. 5, 2013). “If the employee does not prove one of these elements, the entire complaint fails.” *Coryell v. Arkansas Energy Services, LLC.*, No. 12-033, 2013 WL 1934004, *3 (ARB Apr. 25, 2013).

If the complainant meets his or her prima facie burden, the respondent may avoid liability if it demonstrates by clear and convincing evidence that it would have taken the same adverse action in any event. *Fink v. R&L Transfers, Inc.*, *supra*. “Clear and convincing evidence is ‘evidence indicating that the thing to be proved is highly probable or reasonably certain.’” *Coryell v. Arkansas Energy Services, LLC.*, No. 12-033, 2013 WL 1934004, *3 (ARB Apr. 25, 2013) quoting *Warren v. Custom Organics*, No. 10-092, 2012 WL 759335, *5 (ARB Feb. 29, 2012); *Klosterman v. E.J. Davies, Inc.*, No. 12-035, 2013 WL 143761 (ARB Jan. 9, 2013).

IV. DISCUSSION

Whether Complainant engaged in protected activity when he communicated his decision to his employer that he would not report to work on December 19, 2012?

Protected activity includes an employee's refusal to operate a vehicle whenever he or she "has a reasonable apprehension of serious injury to the employee or the public because of the vehicle's hazardous safety or security condition[.]" 49 U.S.C. § 31105(a)(1)(B)(ii). "[A]n employee's apprehension of serious injury is reasonable only if a reasonable individual *in the circumstances then confronting the employee* would conclude that the unsafe condition establishes a real danger of accident, injury, or serious impairment to health." 49 U.S.C. § 31105(a)(2) (italics added). Hazardous safety or security conditions involving a vehicle under § 31105(a)(1)(B)(ii) include unsafe driving conditions caused by weather. *See, e.g., Eash v. Roadway Express, Inc.*, ARB Nos. 02-008 and 02-064, ALJ No. 2000-STA-47 (ARB June 27, 2003), slip op. at 7 (upholding ALJ's determination that a reasonable person who saw news reports indicating road conditions were unsafe and showing freezing rain on one section of the route complainant was to drive would have recognized a bona fide danger of accident or injury to his person); *Ass't Sec'y & Chap.m.an v. T.O. Haas Tire Co.*, 1994-STA-2 (Sec'y Aug. 3, 1994), slip op. at 2 ("unsafe condition of equipment" clause applies to "conditions, such as weather, which make the operation of a commercial vehicle on the road a safety hazard."); *Robinson v. Duff Truck Line, Inc.*, Case No. 86-STA-3, Sec. Dec., Mar. 6, 1987, slip op. at 9, *aff'd sub nom. Duff Truck Line, Inc. v. Brock*, No. 87-3324 (6th Cir. 1988) ("Certainly, where driving is hazardous as a result of weather conditions, the equipment becomes unsafe on the road.").

As stated in my Order Denying Summary Decision, hazardous weather conditions which exist at the location where a driver's trip was to begin, as well as those along the route he was to drive, may justify a refusal to drive. *See Eash v. Roadway Express, Inc.*, *supra*, slip op. at 7; *Ass't Sec'y & Chap.m.an v. T.O. Haas Tire Co.*, *supra*, slip op. at 2; *Robinson v. Duff Truck Line, Inc.*, *supra*, slip op. at 9. As also noted in my summary decision order, there was insufficient evidence in the record prior to the hearing regarding both the actual conditions in Davenport, where Complainant's trip was scheduled to start, as well as along the route Complainant was scheduled to drive that night. While, on the one hand, Treur's deposition testimony reflected that between the hours of 11:00 a.m. and 1:00 p.m. on December 19, 2012, Complainant reported to his employer predictions of "heavy snowfall of 6 to 10 inches, very strong northwest winds (25-35 mph, with gusts exceeding 45 mph)" and likely considerable blowing and drifting of snow late Wednesday night through Thursday afternoon with a blizzard warning posted on the Iowa DOT website in effect at 6:00 p.m. Central time for Des Moines and Omaha (the two cities in which he was expected to make deliveries), on the other hand, there was no evidence in the record of whether the Respondent employer's agents had collected and/or provided Complainant with other information with regard to the current or predicted conditions on Complainant's route. Complainant had claimed that the truck to which he was assigned did not handle well in bad weather; it lacked a sleeper; and he did not want to either find a hotel room or be stuck in a cold cab off the road waiting out the storm. However, to the extent that Complainant made these assertions, on a cold record alone, I was unable to evaluate the credibility as to his concerns and their validity under the circumstances. Accordingly, I denied the Respondent's Motion in order to hear and consider the testimony and better evaluate the record as a whole after the hearing.

At the hearing, the aforementioned witnesses testified and were subject to cross-examination. Both parties filed post-hearing briefs. The parties agree that the relevant inquiry I must address is what the Complainant knew at the time he refused to drive his assigned route on December 19, 2012.

To summarize the parties' positions:

Complainant argues that the decision in *Robinson v. Duff Truck Line, Inc.*, 1986-STA-3 (ARB March 6, 1987); *aff'd sub nom, Duff Truck Line, Inc. v. Brock*, 848 F. 2d 189 (6th Cir, 1988) is "virtually identical to this case." In *Robinson*, the complainant observed inclement weather around his home and called his dispatcher to inform him that he was not going to make his run. He also informed the dispatcher that he could not make it out of his driveway because of icy conditions. The dispatcher informed him that failure to report to work would be considered a "voluntary quit." The ALJ recommended dismissal of the complaint. However, the ARB rejected that dismissal, and the U.S. Court of Appeals affirmed the Secretary's decision. Complainant argues that *Robinson*, in interpreting 49 C.F.R. §392. 14, requires: (1) consideration of the existence of hazardous weather conditions prior to the driver beginning his run; (2) the information that was available to the complainant at the time of his decision not to drive; and (3) whether that information was sufficient to create a reasonable apprehension of serious injury to himself or the public if he drove his vehicle. Treur argues that based on all of his personal knowledge at the time of his decision, his refusal to drive constituted a "reasonable apprehension of serious injury to himself or the public due to the unsafe condition of [such] equipment." Complainant's Post-Hearing Brief at pp. 6-8. Complainant also argues that Respondent's managers made no independent inquiry or assessments regarding road conditions at the time of the decision and provided no information with regard to the weather conditions that might have affected Complainant's own assessment. Complainant further argues that *Roadway Express, Inc. v. ARB*, 116 Fed. Appx. 674 (2004) and *Eash supra* are also instructive with regard to the instant case. In *Eash*, as reported and relied on in Complainant's Post-Hearing Brief, the complainant noted freezing rain on the highway near his home and heard news reports that it was unsafe to drive on the highways along his assigned route. Eash also saw broadcasts of two television reporters reporting from the highway where there was freezing rain on the highway along the route he was supposed to drive. When Eash first called to ask that he be relieved from work, he was told that other drivers were coming in. He called again three hours later and was given two hours to report to work. He then proceeded to work, but stopped and called the dispatcher again when, on the way in, he twice nearly lost control of his car. In *Eash*, the ALJ found that any reasonable person in the complainant's situation would have had a reasonable apprehension of serious injury to himself or the public because of unsafe driving conditions and thus found that Eash had engaged in protected activity. Complainant's Post-Hearing Brief at 9-10. The ARB and Sixth Circuit affirmed, finding substantial evidence supporting the decision in the record. Relying on *Eash*, Treur argues that, under the entirety of the circumstances presented here, his apprehension was both subjectively and objectively reasonable, and he therefore engaged protected activity.

Respondent, in contrast, notes that *Eash* supports the proposition that the STAA protects a driver's refusal to drive only after he has personal knowledge of adverse conditions, *e.g.*, the driver has observed news reports showing freezing rain along his intended route. Respondent's Post-

Hearing Brief at 7. Respondent notes that Treur based his decision not to drive solely on a *forecast* that included a blizzard warning which was not scheduled to go into effect until approximately seven hours after his initial refusal to drive. According to Respondent, the decision was made without Treur having any personal knowledge of current adverse weather conditions either at his home near Davenport or along his scheduled route. Respondent further argues that two hours later, when Treur continued to refuse to drive, he still had no relevant additional information concerning existing hazardous weather conditions along his route. Respondent's Post-Hearing brief at pp. 5-9. Respondent notes that Complainant was never asked to either *begin* his route or to *continue* driving after encountering adverse weather. According to Respondent, on the occasions that Complainant refused to drive, Treur did not know what the actual weather or travel conditions were in Des Moines or Omaha, Nebraska, but did know that weather conditions at the times he communicated with Respondent were "fine" in Davenport. *Id.* at 7. Finally, Respondent notes that all it did was tell Complainant he needed to report to work, such request did not require Complainant to do anything unsafe inasmuch as he was assured they would reassess the conditions at the time he reported to work, and since Complainant's refusal to work was premature and based on his knowledge at the time, his decision was neither objectively nor subjectively reasonable. *Id.* at 8-9.

What Complainant knew between 11:00 a.m. and 1:30 p.m. on December 19, 2012 existing concerning weather conditions.

The record establishes that Treur arose and checked the Iowa DOT website on Wednesday morning, December 19, 2012; the site was predicting bad weather conditions between Des Moines and Omaha, Nebraska. Tr. 36-7. Des Moines was the first stop on his route heading west from Davenport, and it usually took him about an hour and a half to two hours – or until between 7:30 and 8:00 p.m. – to reach there. Tr. 45. He had been making the same run, carrying pharmaceutical supplies, Mondays through Fridays, for approximately two months before he was fired. Based on the Iowa DOT website information and a weather forecast from the day before which predicted blizzard warnings for Wednesday, Treur texted his supervisor McCormick around 11:00 a.m. concerning the Iowa DOT prediction of bad weather between Des Moines and Iowa. He informed McCormick that he was not available for his 6:00 p.m. run from Davenport that evening so that McCormick could make alternate arrangements – either delaying the run or getting another driver assigned to handle it. *Id.* Shortly after texting McCormick, Complainant sent McCormick a fax of the website report. Tr. 38-9. McCormick subsequently called Treur and told him that he needed to make his run and that he could not tell the customer that deliveries were not being made unless I-80 was closed. McCormick was in Plainfield, Indiana. At the time of their phone conversation, between noon and 1:00 p.m., according to Treur, the conditions in Davenport, Iowa, where he was located, were "fine". Tr. 39. After their telephone conversation, Complainant faxed McCormick a copy of the Iowa DOT website report for the customer. Tr. 51.

After speaking with Treur, McCormick called Magnum's safety director, Bob Smith, who was also located in Plainfield, Indiana, to relate the conversation he had just had with Treur. Smith had substantial experience as a dispatcher, as well as driving straight-trucks, daily cab tractors, cab-over tractors with sleepers, conventional tractors with sleepers, and 53-foot box tractor-trailers; he previously owned his own tractor and trailer for several years, and he had been the safety director at Magnum for over 16 years. Smith had had a number of experiences over the years at Magnum where drivers were unable to drive their loads because of weather conditions.

Tr. 119-122. He testified that Magnum had terminated drivers two or three times for failing to show up at work after assessing the driving conditions at that time and testified about a number of occasions when drivers were not disciplined when they had failed to make their runs or report for duty because of then current weather conditions. Tr. 157-8. Smith distinguished between situations involving drivers who had made decisions based on weather *forecasts* and were terminated and those where the company did not discipline drivers because of concerns about hazardous driving conditions which were well-founded and based on existing conditions. Tr. 120. Smith further testified that Magnum relied heavily on its drivers for information with regard to unsafe travel conditions and about Magnum's overall concern about the importance of safe driving and weather conditions. Tr. at 119-122; 157-8.

While it is unclear from the record whether Treur called Smith or Smith called Treur (Compare Tr. 126 with Tr. 52), the salient exchange during their telephone call is not in dispute. Smith informed Treur that he needed to try to make the scheduled run and told him that if the road conditions were bad and Treur did not feel comfortable driving, he could stop at a motel. Tr. at 52-53; 126-128. Smith asked Treur about the weather conditions at Davenport at that time, and Treur reported that they were "fine." Tr. at 128. Treur testified that he was concerned about a lack of hotels along his route, the possibility of getting stuck in a cold cab overnight, and the fact that he did not want to have to leave a truck carrying pharmaceuticals in an insecure location at a motel. Tr. 45-48; Tr. 126-9. Smith agreed that Treur raised some of these concerns during their conversation, but stated that he advised Treur to bring extra clothing, water and other supplies with him in case he got caught in bad weather and that, in any case, Treur needed to report to work and assess the situation at that time. He further informed Complainant that if he began the run and had to cut it short because he ran into bad weather, he could either turn around and come home or find a motel and the company would pay for it. Tr. at 126-8. Smith specifically warned Treur that if he did not report to work and assess the situation at that time, he could be terminated. Tr. at 127. Smith's impression from that phone call was that Treur "was not leaving the house that day." Tr. at 133. After he spoke with Treur, Smith informed McCormick of his conversation and his impression of what Treur was likely to do. *Id.*

According to Smith, sometime between 2:00 p.m. and 3:00 p.m. on December 19th, McCormick called Treur and again asked if he was willing to drive his route that day. Treur told him "no." Tr. 54-55. In response, McCormick fired him.

Based on the record before me, I find Complainant failed to engage in protected activity on the date in question. It is clear that when Treur repeatedly told his employer that he did not intend to report to work between 11:00 a.m. and 2:00 p.m. on December 19th because of the *possibility* of adverse weather conditions on his route, he lacked "a reasonable apprehension of serious injury to the employee or the public because of the vehicle's hazardous safety or security condition[.]" 49 App. U.S.C. § 31105(a)(1)(B)(ii). Throughout that period of time, Complainant lacked both an objective and subjective belief of serious injury because of *existing* conditions. Complainant freely admitted that he had no knowledge of adverse road conditions from Davenport to Des Moines at the time that he communicated to the Respondent his decision not to drive his route that night. He clearly did not know at that time what the actual road conditions were and instead only knew what they were *anticipated* to be. He relied on, and communicated information to his employer, that was either dated (the day before) or on its face amounted only to a prediction of

future weather and road conditions. He knew that the existing conditions were “fine,” and that if the weather conditions had become hazardous by the time he was ready to leave Davenport, he did not have to start his trip. He similarly knew that if he started the trip when the conditions were not hazardous, and they subsequently became so, he could turn around and drive back to Davenport or drive to a motel and get a room at Magnum’s expense. Simply put, rather than postponing assessment of the weather conditions to when he was actually supposed to report to work, he dismissed out of hand any possibility that he could safely drive that night, a decision which was patently unreasonable.

Neither *Robinson* nor *Eash* are consistent with the facts of this case. In both cases, the complainants made *bona fide* timely attempts to report to work, and their ultimate decisions not to drive their assigned routes reflected their “reasonable apprehension” that driving under the existing conditions posed a danger to themselves and others. Treur, in contrast, acted unreasonably and therefore did not engage in protected activity under the statute.

V. CONCLUSION

Complainant failed to establish the existence of any protected activity which precipitated his dismissal. *See Fink v. R&L Transfers, Inc., supra*, slip op. at 3. As Complainant has failed to establish this essential element of his claim, his complaint must be dismissed. *See Coryell v. Arkansas Energy Services, LLC., supra* at *3 (stating that if complainant fails to establish this element, the presiding ALJ must dismiss complaint).

VI. ORDER

For the foregoing reasons, Complainant’s STAA complaint is hereby **DISMISSED**.

SO ORDERED.

STEPHEN L. PURCELL
Chief 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 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. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

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. § 1982.110(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. § 1982.110(a).

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: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) 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.

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: (1) 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 (2) 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, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

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.

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. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Fair Labor Standards. *See* 29 C.F.R. § 1982.110(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. §§ 1982.109(e) and 1982.110(a). 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. §§ 1982.110(a) and (b).