U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 15 September 2017

CASE No.: 2015-STA-00058

In the Matter of

KEITH McCLINTON
Complainant

v.

NEBRASKALAND, INC.
Respondent

Appearances:

Keith McClinton, Pro Se Complainant

Alissa Marcus,
Human Resources Manager, Nebraskaland, Inc.
For Respondent

Before: THERESA C. TIMLIN
Administrative Law Judge

RECOMMENDED DECISION AND ORDER

This case arises under the employee protection provisions of 49 U.S.C. § 31105 of the Surface Transportation Assistance Act of 1982 ("STAA") and the regulations of the Secretary of Labor published at 29 C.F.R. Part 1978. These provisions empower the Secretary of Labor to investigate and determine whistleblower complaints filed by employees of commercial motor carriers who are allegedly discharged or otherwise discriminated against with regard to their terms and conditions of employment because the employee refused to operate a vehicle when such operation would violate a regulation, standard, or order of the United States related to commercial motor vehicles. Keith McClinton ("Complainant") alleges that Nebraskaland, Inc. ("Respondent") terminated him in violation of the STAA. Neither Complainant nor Respondent is represented by counsel.[1]

[1] Both parties acknowledged that they understood that failing to obtain counsel could detrimentally affect their interests in this case and still agreed to proceed *pro se*. (Tr. at 4–5.)

I. PROCEDURAL HISTORY

Complainant filed a complaint with the Occupational Safety and Health Administration ("OSHA") on June 10, 2014. The claims investigator recorded that Complainant alleged that Respondent terminated him in retaliation for his refusal to violate the Hours of Service regulations by driving more than sixteen hours without a rest period. On May 20, 2015, OSHA dismissed the complaint in light of Complainant's failure to communicate with the assigned investigator. In this letter, OSHA indicated that Complainant alleged that Respondent terminated his employment in retaliation for his refusal to drive due to fatigue, after having driven a truck for over sixteen hours.

By letter dated June 26, 2015, Complainant appealed OSHA's decision to the Office of Administrative Law Judges ("OALJ"). Therein, Complainant stated that Respondent terminated him in retaliation for his refusal to drive a truck due to fatigue. He alleged that Respondent assigned him to drive from New York, New York to Lorton, Virginia and back without a rest stop. Complainant averred that when he told the supervisor that he was fatigued, the supervisor responded "the job must be done." Claimant also wrote that Respondent had instructed him on some days to drive a truck without working headlights or backlights.

The undersigned conducted a hearing in this matter on November 5, 2015. This tribunal admitted the following exhibits from the Employer: RX A, RX B, RX C, and RX E. (Tr. at 48–58.)[2] Since neither party was represented by counsel, the undersigned declined to request briefs; however, she gave both parties the opportunity to submit letters to the court informing her that something on the hearing transcript should be corrected. (Tr. at 68–69.) Neither party has submitted any post-hearing materials to this tribunal.

II. ISSUES

The following issues require adjudication:

1. Did Complainant engage in protected activity?
2. Did Complainant communicate the safety-related nature of his refusal to work to Respondent?
3. Did Respondent take adverse employment actions toward Complainant?
4. Did any demonstrated protected activity contribute to Respondent's adverse employment actions?
5. Assuming Complainant can meet his burden of demonstrating the above elements, would Respondent have discharged Complainant in the absence of any protected activity?
6. Is Complainant entitled to any relief?

[2] This Decision uses "RX" to refer to Respondent's Exhibits and "Tr." to refer to the transcript of the November 5, 2015 hearing. Claimant submitted no documentary evidence.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Evidence

1. Documentary Evidence

This tribunal admitted the following evidence in support of the Respondent's case:

- RX A: An incident report dated March 10, 2014, signed by Complainant, describing an erratic lane change performed by Complainant while driving and using his cell phone. The report specifies that if Complainant received another safety complaint over the next three months, he would be suspended.
- RX B: A promissory note, signed by Complainant, authorizing a one-time deduction from Complainant's paycheck of $30.00. The note states that Complainant lost a payment check from a customer, for which $30.00 in stop payment and reissue fees had been charged.
- RX C: A written warning dated April 14, 2014 and signed by Complainant. The warning states that Complainant failed to check his handheld device for paper, rendering it inoperable when it ran out after his fourth stop of the day. The warning also states that future failure to maintain his handheld's paper supply will result in suspension or termination.
- RX E: A promissory note, signed by Complainant, authorizing $1,111.41 in payment at the rate of $50.00 per week. The signed promissory note does not state the reason for the payment, but accompanying documentation demonstrates that Complainant caused some kind of automobile accident. Respondent then charged Complainant for the under-deductible repair costs.

2. Hearing Testimony

The following witnesses appeared at the hearing and testified as follows:

Keith McClinton

Mr. McClinton testified that he started driving for Respondent in 2014, hauling meats in sixteen-foot trucks. (Tr. at 10.) Complainant worked a total of about three and a half months for Respondent. (Tr. at 18.) His routes took him from Hunts Point, New York to other states such as Connecticut and New Jersey. (Tr. at 11.) Complainant also drove a Thursday route to Lorton, Virginia, which he alleged took him about five and a half hours to drive one-way. (Tr. at 12–13, 63.) After dropping his first load in Lorton, Complainant had to make two additional deliveries in Washington, D.C. and Delaware, so it took him a little longer than five and a half hours to return. (Tr. at 13–14.) Complainant started this route every Thursday morning at 1:30 a.m., at least once not returning until 6:00 p.m. (Tr. at 14–15.) Complainant maintained that this was an illegal route due to the hours of service it required, though he admitted that no one in Respondent's employ ever informed him that he could not take breaks during this route. (Tr. at 12, 16–17, 25–26.)

Complainant alleged that Respondent fired him for refusing to drive long trips. (Tr. at 10.) He stated that on the week of his termination, he completed his Lorton route on a Friday, finishing his day at the shop around 6:00 p.m. (Tr. at 18–19.) He alleged that he came in the next morning at 5:30 a.m. and told one of the receptionists that he could not work because he was too tired. (Tr. at 20, 61, 65.) Concerning this Saturday route, Complainant stated: "I could have did[sic] it; I wouldn't want to cause an accident on the road, so I refused it. I said, 'no, I'm too tired to do it.'" (Tr. at 28.) The receptionist told Complainant to go home, so he went home and rested. (Tr. at 20.) Complainant stated that he did not stay long enough at the shop to find out what his route would have been for the day; he simply told the receptionist that he was too tired to drive and then left. (Tr. at 61.[3]) Complainant averred that when he came in for work on Monday, Respondent fired him for not completing his route on Saturday. (Tr. at 20–21, 66.) Complainant subsequently filed a complaint with OSHA. (Tr. at 22.)

Complainant denied having asked any of Respondent's employees for $100 on the Saturday he refused to work. (Tr. at 27.) He stated that he would have completed the route, but when he came in late on Saturday,[4] there was no possibility that he could have completed it. (Tr. at 28.) Complainant also alleged that Respondent would have fired him if he had raised a complaint about his route or indicated that he needed to take a break. (Tr. at 66–67.)

Complainant discussed Respondent's exhibits showing disciplinary actions taken against him. He alleged that Respondent forced him to sign the incident report of March 10, 2014 (RX A) or he would lose his job.[5] (Tr. at 47.) He acknowledged that he temporarily misplaced a customer's payment check and Respondent charged him $30.00 in fees (RX B). (Tr. at 49.) Complainant stated that he had not been trained to replace the paper in his handheld device, for which Respondent disciplined him on April 14, 2014 (RX C). (Tr. at 50.) Finally, despite his signature on the report, Complainant denied that the vehicular accident detailed in RX E ever occurred. (Tr. at 52–53.)

Israel Paulino

Mr. Paulino testified that he has worked for Respondent for seventeen years. (Tr. at 32.) At the time Complainant worked for Respondent, Mr. Paulino worked as a driver and in the office. (Tr. at 32–33, 39–40.) Mr. Paulino alleged that on the day that Complainant quit, he came into the office asking multiple employees for a couple hundred dollars to pay someone outside. (Tr. at 29.) According to Mr. Paulino, Complainant refused to drive his route unless someone gave him a few hundred dollars because someone was going to try to do something to him. (Tr. at 29–30.) Mr. Paulino stated that no one would give Complainant any money, so he

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[3] In response to a question about whether Complainant understood what his route would have been for that Saturday, he stated: "I didn't even stick around long enough. I just really had told him I was too tired, man, I can't do it. I was too tired." (Tr. at 61.)

[4] Complainant's testimony is inconsistent here. Initially he testified that he arrived at 5:30 a.m. on Saturday. Later he testified that he came in "late" on Saturday. (Tr. 20, 28.)

[5] It appears that Complainant mistook RX A for RX E. He assumed that RX A detailed his purported collision with another vehicle, (Tr. at 47); however, this incident is described in RX E.

refused to drive and left. (Tr. at 30.) Mr. Paulino averred that Complainant did not tell anyone that he was tired. (Tr. at 30.)

Mr. Paulino stated that all of Respondent's drivers completed their deliveries in a single day; no drivers slept in their trucks overnight. (Tr. at 37.) He claimed that another driver also completed the Virginia run, but he did not complain about the route. (Tr. at 37–38.) Mr. Paulino speculated that since experienced drivers knew the routes better, perhaps Complainant's longer hours could be explained by his inexperience and getting lost. (Tr. at 37–38.) Mr. Paulino believed that the DOT rules required a driver to receive some kind of break after eight hours of driving, but the driver could continue to drive after that break. (Tr. at 41–43.) He denied that any of Respondent's supervisors ever told him not to take his DOT-mandated rest while driving. (Tr. at 43.)

B. Legal Standard

Congress enacted the employee protection provisions of the STAA to encourage employees in the transportation industry to report noncompliance with safety regulations governing commercial motor vehicles. Brock v. Roadway Express, Inc., 481 U.S. 252, 258 (1987). To effect this goal, the STAA provides in relevant part that:

> (1) A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment because—
> . . .
> (B) the employee refuses to operate a vehicle because—
> (i) the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety or health; . . .

49 U.S.C. § 31105(a).

To demonstrate unlawful activity under the STAA, a complainant must show: (1) that complainant engaged in protected activity, (2) that the employer knew of the protected activity,[6] (3) that the complainant suffered an adverse employment action amounting to discharge, discipline, or discrimination regarding pay, terms, privileges of employment, and (4) that the protected activity was a contributing factor in the adverse employment action. Clark v. Hamilton Haulers, LLC, ARB Case No. 13-023, ALJ Case No. 2011- STA-007, slip op. at 3–4 (ARB May 29, 2014); Ferguson v. New Prime, Inc., ARB No. 10-75, ALJ No. 2009-STA-47, slip op. at 3 (ARB August 31, 2011); Clarke v. Navajo Express, Inc., ARB No. 09-114, ALJ No. 2009-STA-018, slip op. at 4 (ARB June 29, 2011). A "contributing factor" is "any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision." Araujo, 708 F.3d at 158 (quoting Ameristar Airways Inc. v. Admin. Rev. Bd., 650 F.3d 562, 563, 567 (5th Cir. 2011)). Accordingly, a complainant-employee need only show that the protected activity played some role in the employer's decision to take adverse action—any amount of causation will satisfy this standard. Palmer, ARB No. 16-036 at 14–15, 51–55. An

[6] Courts sometimes treat the employer-knowledge requirement as a separate element, and sometime subsume it into the contributing factor analysis. See Schindler v. Estenson Logistics, 2016-STA-69, slip op. at 3–4 (ALJ Dec. 7, 2016).

administrative law judge may consider all evidence relevant to this issue, including the employer's proffered reasons for the adverse action. Id.

Should the complainant succeed, the burden then shifts to the respondent-employer. In order to avoid liability, the employer must demonstrate by clear and convincing evidence that it would have taken the same adverse employment action in the absence of the complainant's protected activity. 49 U.S.C. § 42121(b)(2)(B); 29 C.F.R. § 1978.104(e)(4); Arjuno v. N.J. Transit Rail Operations, Inc., 708 F.3d 152, 157 (3d Cir. 2013); Beatty v. Inman Trucking Mgmt., Inc., ARB No. 13-039, ALJ Nos. 2008-STA-20 & 2008-STA-21, slip op. at 7–11 (ARB May 13, 2014). Clear and convincing evidence shows "that the thing to be proved is highly probable or reasonably certain." DeFrancesco v. Union R.R. Co., ARB No. 13-057, ALJ No. 2009-FRS-009, slip op. at 8 (ARB Sept. 30, 2015). The burden of proof for clear and convincing evidence resides in between "preponderance of the evidence" and "proof beyond a reasonable doubt." See Araujo, 708 F.3d at 159 (citing Colorado v. New Mexico, 467 U.S. 310, 316 (1984); Addington v. Texas, 441 U.S. 418, 525 (1979)). Evidence is clear when the employer has presented an unambiguous explanation for the adverse action. It is convincing when based on the evidence the proffered conclusion is highly probable. DeFrancesco, ARB No. 13-057 at 7–8.

C. Analysis

As explained below, Complainant has failed to demonstrate by a preponderance of the evidence that Respondent violated the STAA. While Complainant may have engaged in protected activity, the evidence fails to prove that Respondent had any knowledge of that protected activity. Accordingly, the complaint must be dismissed.

1. Protected Activity

Complainant's actions arguably constituted "protected activities" under 49 U.S.C. § 31105(a)(1)(B). The STAA's refusal clause (§ 31105(a)(1)(B)) protects drivers who refuse to operate commercial vehicles if such operation would result in a violation of safety-related regulations. See 49 U.S.C.A. § 31105(a)(1)(B)(i); Shields v. James E. Owen Trucking, Inc., ARB No. 08-021, 2007-STA-022, slip op. at 9 (ARB Nov. 30, 2009); Leach v. Basin Western, Inc., ARB No. 02-089, ALJ No. 2002-STA-5 (ARB July 31, 2003). A pertinent regulation to this case is 49 C.F.R. § 392.3, which prohibits drivers from operating motor vehicles when fatigue or illness so impairs, or is so likely to impair, a driver's ability or alertness as to make it unsafe for him to operate a motor vehicle.

Here, Complainant's testimony could demonstrate that he engaged in protected activity by refusing to drive due to his belief that fatigue significantly impaired his ability to drive. At a few points during his testimony, Complainant indicated that he contemplated safety-related concerns stemming from his fatigue-impaired condition. (See Tr. at 28, 61, 65.) Therefore, taking Complainant's testimony as veridical,[7] his refusal to drive due to a subjective belief that

[7] The undersigned notes that Complainant's testimony did not inspire confidence in the reliability of his memory. Complainant stated both that he would not have been able to complete his route on Saturday (Tr. at 28) and that he left Respondent's shop before he discovered what that route was (Tr. at 61). How these seemingly contradictory assertions fit together, Complainant did not explain.

his fatigue rendered him unable to drive safely would constitute protected activity under 49 U.S.C.A. § 31105(a)(1)(B)(i) and 49 C.F.R. § 392.3.

2. Employer Knowledge of Protected Activities

However, to prevail on his STAA claim, Complainant must also prove by a preponderance of the evidence that Respondent knew about his protected activities when it took adverse employment action against him. Clarke v. Navajo Express, Inc., ARB No. 09-114, ALJ No. 2009-STA-018, slip op. at 4 (ARB June 29, 2011). Where a refusal to drive constitutes the protected activity, a driver's general references to being ill or fatigued are insufficient to apprise the employer of protected activity; rather, a driver must explicitly convey that his refusal to drive stems from his belief that driving in his condition would result in a danger to himself or to the public. Stout v. Yellow Freight System, Inc., 1999-STA-42, slip op. at 8–9 (ALJ Dec. 3, 1999), *aff'd* ARB No. 00-017 (ARB Jan. 31, 2003) (adopting and attaching the ALJ's Decision and Order).

Complainant has failed to prove by a preponderance of the evidence that he communicated the safety-related nature of his refusal to drive to Respondent. Even crediting his testimony over Mr. Paulino's[8] concerning the circumstances surrounding Complainant's refusal to drive, Complainant's testimony fails to demonstrate that Respondent knew of his protected activity. Complainant repeatedly stated that he communicated to Respondent that he was refusing to drive because he was tired. (See Tr. at 20, 28, 61, 65.) Yet the few times that Complainant explicitly discussed his safety concerns at the hearing seem to indicate that these concerns remained subjective and uncommunicated. While he stated that he refused to drive

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Complainant also maintained that Respondent did not permit him to take breaks on his Lorton route (Tr. at 65), and that it took about five and a half hours to get there and a little longer to get back (Tr. at 13–14). However, Complainant testified that his trip to Lorton on the Friday before his termination took from 1:30 a.m. to 6:00 p.m. (Tr. at 14–19.) Complainant failed to explain why—for a trip that he estimated should have taken about twelve hours—his trip lasted fifteen and a half hours but did not include any breaks. The undersigned takes administrative notice that according to Google Maps, a trip from Hunts Point, NY to Lorton VA takes anywhere from four hours, fifty-two minutes to six hours and two minutes, depending on the chosen route. Google Maps estimates the round trip journey at eight hours, thirty-three minutes. https://www.google.com/maps/dir/Hunts+Point,+Bronx,+NY/Lorton,+Virginia/Hunts+Point,+Bronx,+NY/@39.7847065,-76.6746194,8z/data=!3m1!4b1!4m20!4m19!1m5!1m1!1s0x89c2f50677312b57:0x3c39b4d40dc27e42!2m2!1d-73.8801301!2d40.8120246!1m5!1m1!1s0x89b652c374a0a4a1:0xaf239558b282f5a3!2m2!1d-77.2277603!2d38.704282!1m5!1m1!1s0x89c2f50677312b57:0x3c39b4d40dc27e42!2m2!1d-73.8801301!2d40.8120246!3e0?hl=en accessed September 14, 2017.

[8] It is difficult to assess the relative credibility of both witnesses when both testified in a confused and rambling matter. Mr. Paulino's story that Complainant came into the workplace on Saturday seeking money because some unidentified people were waiting outside to harm him if he did not return with money has its own credibility issues, especially since Complainant apparently did leave the workplace without obtaining money and did not suffer any harm. For purposes of this decision, the undersigned has accepted Complainant's version of events for that Saturday morning; that he arrived at work but declined to drive his route because he was too tired.

because he *believed* he might cause an accident, he *told* a receptionist "no, I'm too tired to do it." (Tr. at 28.) And though at the hearing Complainant expressed his belief that he was unfit for highway driving on the Saturday he refused to drive, his testimony implied that he never communicated that belief to Respondent and neglected to inquire whether his Saturday route even involved highway travel. (Tr. at 61,[9] 65.[10]) On the basis of Complainant's communications, Respondent would have at most inferred that Complainant did not want to drive because he generally felt fatigued. As he did not explicitly convey that his refusal to drive stemmed from his belief that driving in his condition would result in a danger to himself or to the public, Complainant's alleged communication with Respondent was therefore insufficient to apprise Respondent of his protected activity. See Stout, 1999-STA-42, slip op. at 8–9 (ALJ Dec. 3, 1999), *aff'd* ARB No. 00-017 (ARB Jan. 31, 2003).

The circumstances of Complainant's refusal to drive also failed to inform Respondent of Complainant's subjective safety-related concerns. Complainant testified that he finished his shift on Friday night at around 6:00 p.m. and came in the next morning at 5:30 a.m.[11] (Tr. at 18–20.) Assuming that testimony to be true, Complainant had more than eleven hours to rest before returning to work. Respondent would have reasonably assumed that Complainant received sufficient rest and would not have been impaired due to fatigue.

For these reasons, the evidence of record does not preponderantly establish that Respondent was aware of Complainant's protected activity. His claim under the STAA therefore fails.

IV. CONCLUSION

Complainant has failed to demonstrate that Respondent violated the STAA by taking adverse employment action against him on the basis of his protected activity.

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[9] Complainant: Well, like I said, I came in. I told him I was tired from the previous night, and that's it. I was, yo, I'm tired. I'm not getting on that highway and I'm tired for things to happen. I'm not putting nobody else's life in jeopardy. But only way to Virginia and that's the I-95, I know that much.

Judge Timlin: I understand that, but that day, you were being asked that day to drive to Virginia?

Complainant: I didn't even stick around long enough. I just really had told him I was too tired, man, I can't do it. I was too tired.

(Tr. at 61.)

[10] Complainant: . . . I'm tired. I'm tired. If I can't do it, I can't do it. And then the load is heavy, and I been out all—then I'm coming in, then I got to go back the next morning, 5—come on, I'm tired. I can't—you got to be concentrating on the road. And I was tired, and I told him that. . . .

(Tr. at 65.)

[11] But see Tr. 28 (Complainant testified that he came in late on Saturday morning).

V. ORDER

Complainant is not entitled to relief under the STAA.

SO ORDERED.

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey

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. § 1978.110(a). Your Petition must specifically identify the findings, 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. § 19 78.110(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. 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 for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(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. §§ 1978.109(e) and 1978.110(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. § 1978.110(b).