



Issue Date: 09 September 2015

CASE NO.: 2015-STA-00037

In the Matter of:

**ERIC RAFACZ,
Complainant,**

v.

**STEVENS TRANSPORT,
Respondent.**

ORDER OF DISMISSAL

An Order to Show Cause was issued in the instant case, which has been brought under the employee protection provisions of the Surface Transportation Assistance Act of 1982, as amended (49 U.S.C. §31101 *et seq.*, with implementing regulations appearing at 29 C.F.R. Part 1978, as amended in 2012). As there was no response to the Show Cause Order, this case is being dismissed.

Procedural Background/Facts

The instant case was docketed on February 18, 2015, based upon an email referral the same date from Anthony Incristi, Regional Supervisory Investigator at OSHA, who transmitted his September 25, 2013 determination letter (reference Stevens Transport/Rafacz/6-1730-13-134; USDOT #79466) and Complainant's October 4, 2013 letter indicating that he intended to appeal. In the email, Mr. Incristi advised:

This case should be pending a de novo hearing, but if you look at the objection, it is addressed to the Regional Office only. It is an open appeal in the Regional Office, but does not show up on the OALJ STAA website.

The February 18, 2015 email and attachments are the only documents that have been referred to me.

On May 27, 2015, the undersigned issued an Order to Show Cause, in view of a threshold jurisdictional issue that needed to be resolved. The Show Cause Order ordered that within thirty (30) days of the date of the Order, the Complainant or any other party show cause, if there is any, why this case should not be dismissed for lack of jurisdiction. The Show Cause Order specifically provided: "If no response is filed, this case will be dismissed."

No response was made to the Show Cause Order.

Discussion

Under 29 C.F.R. § 1978.106 (Objections to the findings and the preliminary order and request for a hearing):

(a) Any party who desires review, including judicial review, must file any objections and a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1978.105(c). The objections and request for a hearing must be in writing and state whether the objections are to the findings and/or the preliminary order. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, and copies of the objections must be mailed at the same time to the other parties of record and the OSHA official who issued the findings. [Emphasis added.]

As noted above, the first referral of this matter to the Office of Administrative Law Judges was ostensibly made more than a year after the findings and preliminary order were issued. Inasmuch as there was no indication that Complainant's objections were timely filed with the Chief Administrative Law Judge, I ordered Complainant or any other party to show cause why this case should not be dismissed for lack of jurisdiction within thirty days of the May 27, 2015 Order, or by no later than June 26, 2015. No response has been filed to date.

In view of the above, the evidence of record suggests that the objections were untimely under 29 C.F.R. § 1978.106 and no party has offered evidence to the contrary. This matter must therefore be dismissed for lack of jurisdiction.

ORDER

IT IS HEREBY ORDERED that the above-captioned matter be, and hereby is **DISMISSED** for lack of jurisdiction.

Washington, D.C.

PAMELA J. LAKES
Administrative Law Judge

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

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

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

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. See 29 C.F.R. § 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. § 1978.110(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).