U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 25 June 2015

CASE No.: 2015-STA-46

In the Matter of

ROBERT STAFFORD,
Complainant

v.

AMROX-AMEX TRANSPORTATION,
Respondent

Before: Drew A. Swank
Administrative Law Judge

DECISION AND ORDER GRANTING RESPONDENT'S REQUEST FOR SUMMARY DECISION

This proceeding arises from claims filed by Robert Stafford against his former employer, AMROX-Amex Transportation, under two federal statutes: Section 31105 of the Surface Transportation Assistance Act[1] and Section 11(c) of the Occupational Safety and Health Act.[2] The Secretary of Labor previously investigated Stafford's allegations and concluded that AMROX-Amex Transportation did not violate either statute. He therefore entered into a settlement with AMROX-Amex Transportation that resolved Stafford's claims in exchange for three weeks' back pay and expungement of his personnel file.

Stafford has now appealed the Secretary of Labor's decision and moved for a hearing before the undersigned. AMROX-Amex Transportation has requested that Stafford's claims be dismissed without a hearing, asserting that his claims have already been settled by the parties. For the reasons that follow, the undersigned finds that AMROX-Amex Transportation is entitled

[1] 49 U.S.C. § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53.
[2] 29 U.S.C. § 660(c).

to summary decision and holds that Stafford's claims must be dismissed with prejudice without a hearing.

PROCEDURAL HISTORY

Robert Stafford ("Complainant") is a former employee of AMROX-Amex Transportation ("Respondent"). *Secretary's Findings*, 7, Mar. 10, 2015. On September 8, 2014 and again on September 15, 2014, Respondent suspended Complainant from his job for allegedly engaging in disruptive behavior at work. *Id.* at 2-3. On September 23, 2014, Complainant filed claims against Respondent under two federal whistleblower statutes: Section 31105 of the Surface Transportation Assistance Act (49 U.S.C. § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53) and Section 11(c) of the Occupational Safety and Health Act (29 U.S.C. § 660(c)).[3] *Id.* at 1. Complainant alleged that Respondent unlawfully suspended him from his job because he had expressed concerns that the company had engaged in numerous unsafe and illegal activities. *Id.*

On or around November 3, 2014, Complainant, his union representative, and Respondent's managers met to discuss a possible resolution to Complainant's Whistleblower Claims ("the November 3rd Meeting").[4] *Complainant's Letter to Office of Chief Admin. Law Judge*, 3, Mar. 23, 2015. The parties disagree as to whether they reached a settlement at this meeting. According to Complainant, "the matter of settlement did arise" at the meeting, "but nothing was absolute and no documents were signed." *Complainant's Letter to Admin. Law Judge Drew A. Swank*, 2, ¶ 8, May 29, 2015. Complainant asserts that he notified the parties less than a day later that he would not settle his Whistleblower Claims. *Id*.

Conversely, Respondent contends that all parties – including Complainant – agreed to a settlement at the November 3rd Meeting. *Brief of Respondent,* 2, June 2, 2015. According to Respondent, the company agreed to expunge Complainant's personnel records and provide three weeks of back pay totaling $3,418.50; in exchange, Complainant agreed to drop his Whistleblower Claims against Respondent. *Id.*

Following the November 3rd Meeting, Respondent sent a written settlement agreement and check for three weeks' back pay to Complainant. *Secretary's Findings*, 3. Complainant refused to sign the agreement but admits that he cashed the check.[5] *Complainant's Letter to Admin. Law Judge Drew A. Swank*, 2, ¶ 11, 12; *Secretary's Findings*, 3. Complainant stated that he refused to sign the agreement because he was upset that Respondent had "tracked down" his current employer, United Parcel Service, and asked several "personal questions." *Complainant's Letter to Admin. Law Judge Drew A. Swank*, 2, ¶ 9, 10; *Secretary's Findings*, 3.

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[3]For purposes of this opinion, Complainant's claims against Respondent under these two statutes will be referred to as the "Whistleblower Claims."

[4]Claimant was a member of the United Steel Workers Union, Local #3403. *Secretary's Findings*, 2.

[5]Complainant contends that he only cashed the check after the Department of Labor informed him that he had exhausted all of his legal options. *Claimant's Letter to Admin. Law Judge Drew A. Swank,* 2, ¶ 12.

Although Complainant refused to sign the settlement agreement, the Secretary of Labor concluded that the settlement reached by the parties was fair and reasonable. *Secretary's Findings*, 3. A representative for Respondent and a Regional Investigator for the Occupational Safety and Health Administration ("OSHA") thus signed a settlement agreement on February 9, 2015 ("the February 9th Agreement"). *Settlement Agreement*, 2. MaryAnn Garrahan, an OSHA Regional Administrator, signed and approved the February 9th Agreement on March 3, 2015. *Id*. Complainant did not sign the February 9th Agreement. *Id*.

The February 9th Agreement stated that Respondent would pay Complainant $3,418.50 in back pay compensation and expunge negative references from his employment personnel file. *Id*. at 1. In exchange, OSHA agreed to close all claims filed by Complainant on September 23, 2014 against Respondent under Section 11(c) of the Occupational Safety and Health Act. *Id.* at 2. OSHA would dismiss Complainant's claim under Section 31105 of the Surface Transportation Assistance Act ten days later. *Id*.

On March 10, 2015, the Secretary of Labor – acting through his agent, Garrahan – issued a report finding that there was no reasonable cause to believe that Respondent violated Section 31105 of the Surface Transportation Assistance Act or Section 11(c) of the Occupational Safety and Health Act. *Secretary's Findings*, 1. The Secretary of Labor found that Complainant, his union, and Respondent's managers met on November 3, 2014 and "promptly agreed to resolve all complaints…[including] the OSHA whistleblower complaint." *Id.* at 3. He then found that all parties, including Complainant, agreed that Complainant's personnel records would be expunged and that Complainant would receive three weeks' back pay totaling $3,418.50 in exchange for resolving his claims against Respondent. *Id.*

The Secretary of Labor then found that Complainant received a written settlement agreement and a check for back pay but refused to sign the agreement because he was upset that Respondent had called his current employer to confirm his employment status. *Id.* He noted that OSHA entered into the February 9th Agreement directly with Respondent without Complainant's signature and stated that all of Complainant's Whistleblower Claims had been resolved. *Id.* at 3-4. Finally, the Secretary of Labor notified Complainant that he could file an appeal with the Chief Administrate Law Judge in the U.S. Department of Labor within 30 days. *Id.*

In a letter dated March 23, 2015, Complainant requested a hearing before an administrative law judge. *Complainant's Letter to Office of Chief Admin. Law Judge*, 1. On April 6, 2015, the case was assigned to the undersigned. After reviewing the case file, the undersigned issued a letter on May 5, 2015, asking Complainant, Respondent, and a representative from OSHA to file written briefs addressing whether the February 9th Agreement precluded Complainant from pursuing further litigation before the undersigned.[6] *Letter Regarding Briefs*, 2-3, May 5, 2015.

[6]OSHA did not respond to the undersigned's request.

Complainant filed a written response on May 29, 2015. *Complainant's Letter to the Honorable Drew A. Swank*, May 29, 2015. He argued that his claims should not be dismissed because he never agreed to a settlement and "finds it difficult to believe that any person or agency should have the right to make decisions on my behalf without permission." *Id*. at 3. He also alleged that his union and the Department of Labor "misled and misrepresented" the terms of the settlement and asserted that his claims were never thoroughly investigated. *Id.* Accordingly, Complainant requested permission to continue his Whistleblower Claims against Respondent before the undersigned. *Id.*

Respondent filed its brief on June 2, 2015. *Brief of Respondent*, June 2, 2015. Respondent argued that Complainant's claims should be dismissed without a hearing because the February 9th Agreement prohibits Complainant from pursuing further litigation against Respondent. *Id.* at 3. Respondent alleged that the February 9th Agreement requires Complainant to withdraw his Whistleblower Claims against Respondent in exchange for three weeks' back pay and expungement of his personnel file. *Id.* at 4. Complainant has received back pay and expungement but has continued to pursue his claims against Respondent, in violation of the February 9th Agreement. *Id.* Further, even though Complainant refused to sign the February 9th Agreement, Respondent argued that Complainant's claims should be dismissed because he orally agreed to a settlement at the November 3rd Meeting and cashed Respondent's check for back pay. *Id.* at 5, 7.

ISSUES

Under federal regulations, an administrative law judge may grant summary decision if the moving party can demonstrate that there is no genuine issue of material fact and they are entitled to decision as a matter of law. 29 C.F.R. § 18.72(a).[7] Here, Respondent asks the undersigned to dismiss Complainant's case without a hearing because the parties entered into an oral settlement at the November 3rd Meeting and was released from liability in the February 9th Agreement. Conversely, Complainant contends a hearing should be permitted because he never agreed to an oral settlement and never signed the February 9th Agreement.

Accordingly, the undersigned must resolve the following two questions to determine whether Respondent is entitled to summary decision:

1) Did the parties enter into an oral agreement at the November 3rd Meeting to settle Complainant's Whistleblower Claims?

[7]Proceedings before the Office of Administrative Law Judges in the U.S. Department of Labor are governed by the Rules of Practice and Procedure at 29 C.F.R. Part 18. The Department of Labor published revised rules on May 19, 2015. *See* 80 Fed. Reg. 28768. These rules became effective on June 18, 2015. *Id.* Given that this opinion is issued after June 18, 2015, all citations are to the newly-revised Rules of Practice and Procedure.

2) If so, did the parties intend for the oral agreement to be effective immediately or did they intend for it to only take effect once the agreement was executed in writing?

If the undersigned finds that the parties entered into an agreement at the November 3rd Meeting and that they intended for it to be effective immediately, then the undersigned should grant summary decision for Respondent. Conversely, if the undersigned finds that the parties did not enter into an oral agreement at the November 3rd Meeting or that the parties intended for the agreement to only take effect once it was executed in writing, then summary decision should be denied because Complainant never executed a written agreement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Whistleblower Statutes

Section 11(c) of the Occupational Safety and Health Act provides protection to individuals who engage in protected activity related to health and safety in the workplace. 29 U.S.C. § 660(c)(1). If an individual believes their statutory rights have been violated, they may file a complaint with the Secretary of Labor within 30 days after the alleged incident. 29 U.S.C. § 660(c)(2). The Secretary of Labor will conduct an investigation and make a finding. 29 U.S.C. § 660(c)(3).

Similarly, Section 31105 of the Surface Transportation Assistance Act protects employees from retaliation when they file complaints related to violations of commercial motor vehicle safety regulations. 49 U.S.C. § 31105(a). If an employee believes they have been the victim of unlawful retaliation, they may file a complaint with the Secretary of Labor within 180 days after the alleged incident. 49 U.S.C. § 31105(b). Within 60 days after receiving a complaint, the Secretary of Labor must conduct an investigation and issue a written finding. 49 U.S.C. § 31105(b)(2)(A); 29 C.F.R. § 1978.105(a). Either party may request a hearing before an administrative law judge within 30 days after the written finding is issued. 49 U.S.C. § 31105(b)(2)(B); 29 C.F.R. § 1978.106(a). A claim may be settled any time after the complaint has been filed and before the findings or order become final by operation of law if the Assistant Secretary of Labor for Occupational Safety and Health, the complainant, and the respondent agree to a settlement.[8] 49 U.S.C. § 31105(b)(2)(C); 29 C.F.R. § 1978.111(d)(1).

Applicability of Federal Law

Complainant's Whistleblower Claims involve a right to sue under two federal statutes; thus, federal law controls the validity of any settlement of these complaints. *Eash v. Roadway Express, Inc.*, 1999 DOL Admin. Rev. Bd. LEXIS 108, *15-16 (Admin. Rev. Bd. 1999).

[8]The Assistant Secretary of Labor for Occupational Safety and Health can delegate his or her authority to another person or persons. 29 C.F.R. § 1978.101(b).

Did the parties enter into an oral agreement at the November 3rd Meeting to settle Complainant's Whistleblower Claims?

The first issue facing the undersigned is whether the parties entered into an oral settlement at the November 3rd Meeting. The Secretary of Labor and Respondent contend that the parties agreed at the meeting that Complainant would stop pursuing his Whistleblower Claims against Respondent in exchange for three weeks' back pay and expungement of his personnel file; conversely, Complainant contends that the parties discussed a settlement but no deal was reached.

Settlement agreements are contracts, and their enforcement is controlled by principles of contract law. *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-033, slip op. at 8 (Admin. Rev. Bd. 1997). An oral agreement can form the basis of a contract as long as the elements of contract formation are present: offer, acceptance, and consideration.[9] *Eash*, 1999 DOL Admin. Rev. Bd. at 17. To find that the parties formed an enforceable oral agreement, "the record must clearly reflect all material terms of the settlement and evidence an unequivocal declaration by the parties that they have agreed to those terms." *Id.* at 12-13. An oral agreement to settle a complaint is enforceable against a complainant who knowingly and voluntarily agrees to the terms of a settlement. *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 52 n.15 (1974). A complainant "knowingly" agrees to the terms of a settlement if he or she agrees "voluntarily and purposely, and not because of a mistake or accident." *Taylor v. Gordon Flesch Co.*, 793 F.2d 858, 863 (7th Cir. 1986), quoting *United States v. Jones*, 696 F.2d 479, 493 (7th Cir. 1982).

In this case, the undersigned finds that the record establishes that Complainant and Respondent entered into a valid oral agreement at the November 3rd Meeting. First, the record shows that all required elements of a contract are present. Regarding the elements of offer and acceptance, the Secretary of Labor conducted an extensive investigation and determined that when the parties met at the November 3rd Meeting, "All parties promptly agreed to resolve all complaints…[including] the OSHA whistleblower complaint…" *Secretary's Findings,* 3. As for consideration, the Secretary of Labor found that in exchange for dropping his Whistleblower Claims against Respondent, "the parties, including the Complainant, agreed that Complainant's records in his personnel file relating to his perceived protected activity and disciplinary actions would be expunged and he would receive back pay for the entire three weeks' that he was unemployed. The back pay amount totals $3,418.50 in gross pay." *Id.* The undersigned thus finds that all elements of a valid oral contract were satisfied during the parties' settlement negotiations at the November 3rd Meeting.

The record also demonstrates that all material terms of the settlement were established and that all parties unequivocally agreed to these terms at the November 3rd Meeting. As

[9]Consideration is defined as a bargained-for exchange where the promisor receives some benefit or the promisee suffers a detriment. *Gibson v. Neighborhood Health Clinics*, 121 F.3d 1126, 1130 (7th Cir. 1997).

discussed, *supra*, the Secretary of Labor found that all parties agreed that Complainant would receive three weeks' back pay totaling $3,418.50 and expungement of his personnel record in exchange for dropping his Whistleblower Claims against Respondent. Finally, the record does not suggest that Complainant mistakenly or accidentally agreed to the settlement at the November 3rd Meeting.

In his brief, Complainant argues that the parties never reached an oral settlement during the November 3rd Meeting, stating "the matter of settlement did arise but nothing was absolute and no documents were signed." *Complainant's Letter to Admin. Law Judge Drew A. Swank*, 2, ¶ 8. The undersigned agrees that there is no evidence that Complainant signed any settlement documents at the November 3rd Meeting. However, the undersigned gives little weight to Complainant's assertion that the parties did not enter into an oral settlement agreement at the November 3rd Meeting for two reasons. First, the Secretary of Labor conducted an extensive investigation and found that the parties did enter into an oral agreement at this meeting. Even more importantly, Complainant acknowledges that he received and cashed a check from Respondent for three weeks' back pay after the November 3rd Meeting. *Complainant's Letter to Honorable Drew A. Swank*, 2, ¶ 12. If the parties did not agree to an oral settlement at the November 3rd Meeting, it would make little sense for Respondent to send an unsolicited check to Complainant; similarly, it would make little sense for Complainant to cash a check that he was not entitled to. The findings of the Secretary of Labor and the parties' behavior convinces the undersigned that the parties entered into a valid oral settlement agreement at the November 3rd Meeting. This agreement required Complainant to stop pursuing his Whistleblower Claims against Respondent in exchange for three weeks' back pay and expungement of his employment personnel file.

Did the parties intend for the oral agreement to be effective immediately or did they intend for the oral agreement to only take effect once it was executed in writing?

The undersigned has found that the parties formed an oral settlement agreement at the November 3rd Meeting and that the agreement has all the elements of a valid contract. The record also establishes, however, that Complainant received – but refused to sign – a written settlement agreement after the November 3rd Meeting. The record also demonstrates that Respondent and OSHA representatives subsequently entered into the February 9th Agreement that released Respondent from Complainant's Whistleblower Claims.

The Administrative Review Board has provided a good explanation of the two possibilities that exist when a written settlement agreement is drafted after settlement negotiations, as occurred in this case. *Eash*, 1999 DOL Admin. Rev. Bd. at 33. On the one hand, the Administrative Review Board has stated that the written agreement may merely memorialize an already-enforceable oral agreement. *Id.* In this scenario, the parties would be bound by the oral agreement as soon as it is agreed upon. *Id.* at 33-34. Conversely, the parties may intend for the oral agreement to only take effect once it is executed in a written document.

Id. at 33. In this situation, no contract exists until the parties execute a written document. *Id.* at 33-34. When it is unclear whether the parties intended to form an oral or written contract, a judge must objectively analyze the parties' words and actions during the negotiations to determine their intentions. *Id.* at 35-36; *see Consarc Corp. v. Marine Midland Bank, N.A.,* 996 F.2d 568, 576 (2d Cir. 1993) ("fact finders examining intent are instructed to look to the time of contracting[;] they must consider the objective intentions of the parties manifested at that time").

The Administrative Review Board has held that the Restatement (Second) of Contracts provides valuable guidance in evaluating parties' intentions during contract negotiations. *Eash,* 1999 DOL Admin. Rev. Bd. at 36-37. Specifically, the Restatement provides that the following factors should be considered to determine whether the parties intend to be bound by an oral agreement in the absence of an executed written agreement:

- The extent to which express agreement has been reached on all terms to be included;
- Whether the contract is of a type usually put in writing;
- Whether a contract need a formal writing for its full expression;
- Whether it has few or many details;
- Whether the amount involved is large or small;
- Whether it is a common or unusual contract;
- Whether a standard form of contract is widely used in similar transactions;
- Whether either party takes any action in preparation for performance during the negotiations.

Restatement (Second) of Contract § 27, at comment (c).

Courts have assigned the most weight to the following four factors, noting that no single factor is decisive:

1) Whether any party expressly has reserved the right not be bound in the absence of an executed written agreement;

2) Whether any party has partially performed and whether that performance has been accepted by the party disclaiming the agreement;

3) Whether all terms have been fully negotiated or settled so that nothing remains but to sign what already has been agreed upon; and

4) Whether the particular agreement is the type of contract usually committed to writing

Eash, 1999 DOL Ad. Rev. Bd. at 38; *Ciaramella,* 131 F.3d at 323; *Winston,* 777 F.2d at 78.

The undersigned will analyze each of these factors to determine whether the parties intended to be bound by their oral agreement or whether they intended that any agreement would only take effect once it was executed in writing.

A. Has any party expressly reserved the right not to be bound in the absence of an executed written agreement?

Nothing in the record suggests that Complainant expressed any intention not to be bound by the oral settlement reached at November 3rd Meeting unless the agreement was executed in writing. Accordingly, the undersigned finds that this factor favors Respondent in establishing that the parties formed an oral settlement contract.

B. Has any party partially performed? If so, has that performance been accepted by the party attempting to repudiate the agreement?

The next factor is whether one of the parties has partially performed and whether the other party contesting the settlement agreement has accepted that performance. "Partial performance is an unmistakable signal that one party believes there is a contract; and the party who accepts performance signals, by that act, that it also understands a contract to be in effect." *R.G. Group, Inc. v. Horn & Hardart Co.*, 751 F.2d 69, 75-76 (2d Cir. 1984).

This factor weighs heavily in favor of Respondent. Both parties' behavior strongly suggests that they believed that the oral settlement was binding. For example, the oral settlement stated that Respondent must provide Complainant with three weeks' back pay totaling $3,418.50. After the November 3rd Meeting, the record establishes that Respondent sent a check totaling $3,418.50 to Complainant. By his own admission, Complainant accepted the check and cashed it. There is no evidence that Complainant attempted to return the money to Respondent. Respondent has thus partially performed its obligations under the oral settlement agreement, and Complainant has accepted that performance. Accordingly, the undersigned finds that both parties believed that they had formed a binding oral contract.

C. Have all terms of the agreement been fully settled?

The third factor is whether all the terms of the agreement were fully settled, meaning that there was literally nothing left to negotiate. "Nothing" has been construed to mean relatively small, as well as substantive, points of disagreement. *Eash*, 1999 DOL Admin. Rev. Bd. at 44. Here, the record demonstrates that the terms of the settlement were fully negotiated at the November 3rd Meeting. Specifically, Complainant agree to drop his Whistleblower Claims against Respondent in exchange for three weeks' back pay and expungement of his personnel file. Moreover, there is no evidence that Complainant refused to sign the settlement agreement because he objected to its terms or wished to negotiate further. Instead, the record indicates that Complainant refused to sign the settlement agreement because he was upset that Respondent

contacted his current employer. Accordingly, the undersigned finds that this factor weighs in favor of Respondent in demonstrating that the parties intended to form an oral contract.

D. Is this the type of agreement that is normally committed to writing?

The final factor is whether the settlement agreement at issue is the type that is normally committed to writing. Settlement agreements should typically be documented in writing or put on the record in open court. *Ciaramella,* 131 F.3d at 326. When the parties are adversaries and the purpose of the settlement agreement is to prevent further litigation, the settlement should normally be put in writing so that it is readily enforceable. *Winston*, F.2d at 83. Here, this agreement is designed to prevent further litigation between the parties. The undersigned thus finds that this type of agreement is usually is committed to writing. Accordingly, this factor weighs in favor of Complainant in establishing that the parties did not intend to form an oral contract.

Analysis

After considering all of these factors, the undersigned finds that the oral agreement reached by the parties at the November 3rd Meeting became effective immediately and did not depend upon the execution of a written document by the parties. There is no evidence that Complainant expressly reserved the right to be bound by the oral agreement only if it was executed in writing. Similarly, the record shows that the terms of the oral agreement were settled and there was nothing left to negotiate. Although a settlement is normally committed to writing, the parties in this case behaved as if they had an oral settlement contract after the November 3rd Meeting. Moreover, the settlement has relatively few details, the amount involved is rather small, and the contract is fairly common – all factors indicating that the parties intended to form a binding oral settlement at the November 3rd Meeting.

Public Policy

Public policy considerations also support summary decision for Respondent. Settlement agreements are a valuable tool for resolving disputes without subjecting feuding parties to the severe burdens and expenses of protracted litigation. *D.R. v. East Brunswick Bd. of Educ.,* 109 F.3d 901 (3d Cir. 1997). Parties generally must be held to their settlement agreements because litigants would be less likely to enter into settlement talks if they believe that the opposing party could easily repudiate an agreement and resume litigation. *Balog v. Med-Safe Systems, Inc.,* 2000 DOL Admin. Rev. Bd. LEXIS 96 (Admin. Rev. Bd. 2000). In this case, it would set a bad precedent for settlement negotiations in future cases if Complainant is permitted to reap the benefits of his bargain with Respondent but is not compelled to abide by its obligations.

CONCLUSION

The undersigned finds that the parties formed a valid oral settlement at the November 3rd Meeting to resolve Complainant's Whistleblower Claims. Although a written settlement was subsequently drafted – which Complainant refused to sign – the undersigned finds that the oral agreement became effective when the parties agreed to it at the November 3rd Meeting, and its legal force did not depend upon the execution of a written document.

Under the terms of the settlement, Complainant agreed to receive three weeks' back pay and expungement of his personnel records; in exchange, he agreed to stop pursuing his Whistleblower Claims against Respondent. Complainant has received the benefits of the bargain but is still pursuing his Whistleblower Claims against Respondent. Accordingly, in order to uphold the parties' negotiated settlement, the undersigned finds that Respondent's request for summary decision must be granted. Complainant's request for a hearing is denied, and his claims under Section 31105 of the Surface Transportation Assistance Act and Section 11(c) of the Occupational Safety and Health Act are dismissed with prejudice.

IT IS SO ORDERED.

Digitally signed by Drew A. Swank
DN: CN=Drew A. Swank, OU=Administrative Law Judge, O=US DOL Office of Administrative Law Judges, L=Pittsburgh, S=PA, C=US
Location: Pittsburgh PA

DREW A. SWANK
Administrative Law Judge

NOTICE OF APPEAL RIGHTS

To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within 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.

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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).