U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 02 February 2018

CASE NO.: 2017-STA-00086

In the Matter of:

ADRIANO BUDRI,
Complainant

v.

FIRSTFLEET, INC.,
Respondent

DECISION AND ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DECISION

This case arises under the employee protection provisions of the Surface Transportation Assistance Act, 49 U.S.C. § 31105 (STAA), and its implementing regulations at 29 C.F.R. Part 1978, filed by Adriano Budri (Complainant) against FirstFleet (Respondent).

Complainant initiated this action when he filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) on March 20, 2017, and August 3, 6, 10 and 15, 2017. In his OSHA complaint, Complainant alleged that Respondent violated the STAA when it terminated his employment in retaliation for raising three safety concerns: 1) an expired IFTA decal, 2) alleged violations of hours of service, and 3) replacement of a headlight bulb. After completing an investigation, OSHA dismissed Complainant's complaint on August 29, 2017. Complainant requested a hearing before the Office of Administrative Law Judges (OALJ).

On November 21, 2017, Respondent filed its Motion for Summary Decision. Respondent argued that the undisputed facts establish 1) that Complainant did not engage in protected activity and 2) that any protected activity was not a contributing factor in the termination decision. Complainant filed his Response on November 27, 2017. On December 12, 2017, the Court issued an Order to Show Cause and Canceling Hearing wherein Complainant was advised of the procedures concerning summary decision and provided a further opportunity to respond.[1]

[1] This order was sent because of Complainant's *pro se* status. However, the Court recognizes Complainant is not a novice in regard to the STAA, having filed four previous STAA complaints against other employers (2017STA00029; 2014STA00032; 2011STA00015; and 2008STA00053). There have been numerous motions for sanctions filed by both Parties. I deny all these motions at this time. Complainant has also expressed numerous concerns regarding electronic signatures. The Court assumes these concerns relate to his receipt/nonreceipt of the employee handbook. The Court has not considered whether Complainant has or has not received the employee handbook in determining whether summary decision is appropriate.

I. SUMMARY DECISION STANDARD

Summary decision is appropriate "if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." 29 C.F.R. § 18.72; *see also Williams v. Dallas Indep. Sch. Dist.*, No. 12-024, 2012 WL 6849447 (ARB Dec. 28, 2012). "At the summary decision stage of a STAA case, the ALJ assesses the evidence for the limited purpose of deciding whether it shows a genuine issue as to a material fact…. If Complainant fails to establish an element essential to his case, there can be "no genuine issue as to a material fact since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." *Coates v. Southeast Milk, Inc.*, No. 05-050, 2007 WL 4107740, *3-4 (ARB Jul. 31, 2007).

In evaluating if Respondent is entitled to a summary decision in this matter, all facts and reasonable inferences therefrom are considered in the light most favorable to the non-moving Complainant. *Battle v. Seibles Bruce Ins. Co.*, 288 F.3d 596 (4th Cir. 2002) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)). "However, even when all evidence is viewed in the light most favorable to the nonmoving party, the non-moving party cannot defeat a properly supported summary judgment motion without presenting 'significant probative evidence.'" *Pueschel v. Peters*, 340 Fed. Appx 858, 860 (4th Cir. 2009) (unpub.) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)). A party opposing a motion for summary decision "may not rest upon the mere allegations or denials of [a] pleading; [the response] must set forth specific facts showing that there is a genuine issue of fact for the hearing." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

When the information submitted for consideration with a motion for summary decision and the response to that motion demonstrates that there is no genuine issue as to any material fact, the request for summary decision should be granted. Where a genuine question of a material fact remains, a motion for summary decision must be denied.

II. UNDISPUTED FACTS[2]

1. Respondent and Complainant are subject to the STAA.

2. Respondent hired Complainant as a commercial truck driver on **January 25, 2017**. He was assigned to be dispatched from the Fort Worth, Texas, terminal. Daniel Humphreys is the Terminal Manager. The Fort Worth terminal services a major customer, Glazer's Beer and Beverage. (RX 3 ¶ 4-5).

3. Pursuant to Respondent's policy, the first 60 days of employment are an introductory period. The progressive disciplinary policy does not apply to employees during the introductory period. Disciplinary issues that might

[2] References are to Respondent Exhibits (RX) attached to the Motion to Summary Decision and Complainant Exhibits (CX) attached to his Response.

otherwise result in lesser discipline may result in termination for introductory employees. (RX 6, p 11; RX 3 ¶ 7).

4. On **January 28, 2017**, after leaving for his first dispatch, Complainant contacted Humphreys by email to report the IFTA decal on the truck had expired. Eight minutes later, Humphreys replied that he would recheck and replace any and all missing paperwork and thanked Complainant. Respondent's Safety Director explained to Complainant that there was a two-month grace period for obtaining new decals and Respondent was not in violation of the registration requirement. (RX 5 ¶ 7; RX 3 Ex A).

5. On **January 30, 2017**, Complainant stopped at a Mack Dealership where Humphreys had approved a purchase order for Complainant to purchase a latch support. After Complainant left the Mack Dealership, he stopped at a Pilot truck stop where he attempted to purchase fuel, oil, windshield wiper fluid, antifreeze, and a bulb for his headlight using the Comdata card he had been issued. The Comdata card was set up to automatically allow fuel purchases but could not be used to purchase parts such as the light bulb. Complainant contacted Humphreys to report the declined purchase and to request a new bulb. Humphreys instructed Complainant to purchase the bulb, which cost approximately ten dollars, and assured him that he would be reimbursed for the purchase. The bulb was not replaced at that time. When Complainant returned from his dispatch, it was discovered that a replacement bulb was in his cab the entire trip. Humphreys changed the bulb for Complainant. (RX 3 ¶ 11-13). There is no evidence that Respondent took any action against Complainant at that time.

6. On **February 8, 2017**, Complainant had a discussion with Humphreys regarding logging his time while repairs were being completed on his vehicle. The issue was whether Complainant should log in as "On Duty Not Driving" or as "Off Duty" and whether Texas or U.S. DOT regulations governed. Complainant insisted the direction he was given regarding logging time was wrong. There is no evidence that Respondent took any action against Complainant at that time. (RX 3 ¶ 14; RX 5 ¶ 8).

7. During his employment with Respondent, Complainant operated exclusively within the State of Texas. (RX 5 ¶ 6).

8. On **February 10, 2017**, Complainant failed to properly secure the load in his tractor trailer. As a result, several pallets of beer fell over inside the trailer and were subsequently rejected by Glazer's. Glazer's estimated the damage to be valued at $1,000. Complainant failed to report the damaged product to Humphreys despite having been previously coached to report all product and equipment accidents. Respondent learned of the damage when Humphreys was notified by Glazer's Shipping and Receiving Manager, Nick Gomez. (RX 3 ¶ 15-16; RX 3 Ex C).

9. During the same call, Humphreys learned that Gomez began experiencing problems with Complainant soon after he was hired. Gomez found Complainant rifling through a box of personal items on Gomez's desk. On several occasions, Gomez found Complainant looking over his shoulder as he read his personal or business e-mail. Gomez stated he had to repeatedly tell Complainant to remain in his truck and to stay off the loading docks while Grazer's forklift operators unloaded the trailers. Complainant refused to follow Gomez's instructions, exited his truck, and wandered about the loading docks. (RX 3 ¶ 17).

10. The Glazer's facility has a designated restroom for truck drivers to use, located in the front of the building and away from the unloading equipment to ensure the safety of drivers and forklift operators. Gomez told Humphreys that Complainant refused to use the restroom designated for drivers. Instead, he used Glazer's employee restroom which required him to walk across several loading docks. Gomez said he spoke several times with Complainant about the restroom issue, but Complainant ignored Gomez's directives and continued to use the employee restroom. Gomez stated Complainant was on his "last chance," had received his "last warning," and that if the situation did not change, Complainant would be banned from their facility. (RX 3 ¶ 17).

11. Approximately an hour later, Gomez called Humphreys and told him that Complainant failed to correctly restack several pallets of beer despite being told on several occasions how to correctly position the pallets. Gomez complained that Complainant was also refusing to follow instructions, using the employee restroom again, and becoming argumentative. Gomez said he was banning Complainant from Glazer's facility. Humphreys asked that Complainant be given one more chance. Gomez declined to do so, and said that if Respondent sent Complainant back to the facility, he would reject the load until another driver made the delivery. (RX 3 ¶ 18).

12. On **February 16, 2017**, Complainant had an accident at the facility of a different customer, resulting in a door being torn off a trailer. Complainant failed to report the accident to Humphreys, despite having been coached to report accidents. Respondent's handbook states that "Failure to report a Company related accident" is a ground for immediate discharge. (RX 6, p 23; RX 3 ¶ 20).

13. On **February 17, 2017,** Complainant was dispatched to deliver a time-sensitive order valued at $50,000 to a distributor in Ennis, Texas. Complainant arrived to pick up the load at 4:35 a.m., more than three hours before the scheduled pick up time. The customer did not have the loading completed. Rather than wait, Complainant independently altered his assigned route schedule and move on to the next order on the list. At that time, Complainant did not notify Humphreys that he had changed the route schedule. (RX 3 ¶ 21).

14. Because Complainant altered his delivery schedule and delivered out of sequence, he did not make it back to the first delivery pickup before the customer had closed

for the day. Humphreys had to locate additional FirstFleet personnel to take the delivery to the distributor on Saturday. The distributor, which is typically closed on Saturday, also had to assemble personnel to come in to assist with offloading and receiving. This resulted in Humphreys receiving another serious customer complaint. (RX 3 ¶ 22).

15. Also on **February 17, 2017**, Complainant called Humphreys to report a flat tire. Humphreys instructed Complainant to exit the customer's facilities and to remain on the service road directly in front of the customer's facility. Humphreys stated that he would dispatch a repair service crew to meet Complainant there and repair the tire. However, Complainant left the service area and drove the truck (on a flat tire) to a local truck stop approximately six miles away. Complainant failed to notify Humphreys that he had left the service area. Humphreys did not become aware that Complainant was not where he was instructed to stay until the repair service crew notified Humphreys that Complainant was gone. Respondent was charged $150.00 for the service dispatch and charged for the tire repair at the truck stop. (RX 3 ¶ 23).

16. On **February 17, 2017**, Humphreys contacted the Human Resources Manager and requested authorization to terminate Complainant's employment. The email details the events at Glazer's, the accident resulting in a door being torn off a trailer, Complainant's failure to report the accident, Complainant's failure to deliver a time-sensitive order, and the flat tire incident. No mention is made of the IFTA decal, the burned out bulb, or the time logging issue. On **February 21, 2017,** Complainant's next workday, Humphreys informed Complainant of his termination. (RX 3 ¶ 24: RX 3 Ex D).

III. WHISTLEBLOWER PROTECTION UNDER THE STAA

The STAA prohibits an employer from discharging or discriminating against an employee because the employee has engaged in certain protected activity. The employee protection provisions of the STAA at issue in this case are these:

> (a) Prohibitions: (1) A person may not discharge an employee or discipline or discriminate against an employee regarding pay, terms, or privileges of employment because: (A)(i) the employee, or another person at the employee's request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order, or has testified or will testify in such a proceeding [the complaints clause]…
>
> (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, health, or security; or (ii) the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle's hazardous safety or security condition. [the refusal to drive clause]

49 U.S.C. § 31105(a)(1)(A)(i), (B).

Congress amended the STAA on August 3, 2007, to incorporate the legal burdens of proof set forth in the Wendell H. Ford Aviation and Investment and Reform Act for the 21st Century (AIR-21), 49 U.S.C. § 42121(b). Pub. L. 110-53, 9/11 Commission Act of 2007, 212 Stat. 266 § 1536; *Smith v CRTS International, Inc.*, No. 11-086, 2013 WL 2902809, *2 fn.1 (ARB Jun. 6, 2013); 49 U.S.C. § 31105(b). In order to prove a violation under the STAA, Complainant must show, by a preponderance of evidence: (1) that he engaged in protected activity; (2) that Respondent took an adverse employment action against him, and; (3) that his protected activity was a contributing factor in the adverse action. *Williams v. Dominos Pizza*, ARB No. 09-092, ALJ No. 2008-STA-00052, slip op. at 5 (ARB Jan. 31, 2011).

At issue here is whether Complainant engaged in protected activity and whether the protected activity was a contributing factor to the adverse employment action. If Complainant establishes that "the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer's decision," then he has met element (3). 77 FR 44127 (Jul. 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 Complainant successfully proves that his protected activity was a contributing factor in the decision to discharge him, then Respondent may nonetheless avoid liability if it demonstrates by clear and convincing evidence that the adverse employment action was the result of events or decisions independent of protected activity. 49 U.S.C. § 42121(b)(2)(B)(iv); 29 C.F.R. § 1979.109(a)). 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).

At this summary decision juncture, it is Respondent's burden to establish that no genuine issue of material fact exists regarding one or more essential elements of Complainant's claim. *Coates v. Southeast Milk, Inc., supra*.

Protected Activity

As noted previously, a complainant can satisfy the "protected activity" element of his prima facie case under either the "complaints clause" (49 U.S.C. § 31105(a)(1)(A)(i)) or the "refusal to drive clause" (49 U.S.C. § 31105(a)(1)(B)). There has been no allegation or evidence that Complainant ever refused to drive. The three alleged incidents of protected activity will thus be considered under the "complaints clause."

The IFTA decal

I find Complainant's comments regarding an outdated IFTA decal did not constitute protected activity. First, it is not disputed that the IFTA decal was within the grace period for

obtaining a new decal. Second, even if the decal had expired, the IFTA decal had nothing to do with safety. Rather, the International Fuel Tax Agreement (IFTA) is an agreement between the lower 48 states of the United States and the Canadian provinces to simplify the reporting of fuel use by motor carriers that operate in more than one jurisdiction. *See* https//en.wikipedia.org/wik/ International_Fuel_Tax_Agreement.

The Burned Out Bulb

While the undisputed facts establish that Respondent immediately addressed Complainant's concern and provided a means by which any safety issue could be immediately corrected, for purposes of this motion, I find that the reporting of the burned out bulb was protected activity.

The Logging of Time Spent in Maintenance

Complainant had a discussion with Humphreys regarding logging his time while repairs were being completed on his vehicle. The issue discussed was whether Complainant should log in as "On Duty Not Driving" or as "Off Duty" and whether Texas or U.S. DOT regulations governed.

As noted in *Blackann v. Roadway Express, Inc.,* ARB Case No. 02-115 (Jun. 30, 2004*),* federal guidance provides that "it is the employer's choice whether the driver shall record stops made during a tour of duty as off-duty time." 62 Fed. Reg. 16370, 16422 (Apr. 4, 1977). The ARB held that this dispute involved company policy, not any conduct that is protected by the Act. On appeal, the Sixth Circuit affirmed the ARB, stating the ARB correctly noted that the regulations explicitly leave it to the employer to determine the manner of recording tour of duty time and that Roadway's time log policies did not force Blackann to violate any federal regulation. *Blackann v. Roadway Express, Inc.,* 159 Fed. Appx. 704 (6th Cir. 2005).

I find that Complainant's discussion with Humphreys regarding logging his time was not protected activity.

Causation

In a motion for summary decision, the moving party has the burden of establishing the absence of evidence to support the nonmoving party's case. The evidence must be viewed in the light most favorable to the nonmoving party. Case law recognizes that it may be difficult to present direct evidence on issues such as motive, animus, or contribution. It disfavors use of summary decision to dismiss cases for failing to establish a genuine issue of material fact based on those issues. The nonmoving party need not provide direct evidence to satisfy the causation element; rather, circumstantial evidence may be sufficient.

To withstand the Motion for Summary Decision, Complainant must show there is a genuine issue for trial by presenting evidence of specific facts that, if true, would allow a reasonable jury to find that Complainant's reporting the burned out bulb was a contributing factor in his termination. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242 (1986).

Although not dispositive, evidence of temporal proximity may be sufficient circumstantial evidence to create a genuine issue of material fact that the protected activity contributed to the adverse action. Conversely, a causal connection may be severed by the passage of a significant amount of time or by some legitimate intervening event. *Wiest v. Tyco Electronics Corp.,* 812 F.3d 319 (3rd Cir. 2016); *Ameen v. Merck & Co., Inc.,* 226 Fed. App'x 363, 376 (5th Cir. 2007) (finding that employee's receipt of favorable treatment after the alleged protected activity is "utterly inconsistent with an inference of retaliation").

I find that any inference of causation gleaned from temporal proximity is nonexistent as the undisputed facts overwhelmingly demonstrate legitimate intervening events such that any causal connection that could be derived from the circumstances was severed. Specifically, the undisputed facts demonstrate that:[3]

1. The light bulb incident happened in the first week of Complainant's employment. Respondent offered an immediate remedy and, when Complainant declined to purchase the bulb, replaced the bulb at the first possible opportunity.

2. No action was taken by Respondent against Complainant following any of the alleged protected activities, and there is no mention of any of the activities at any later time.

3. All the alleged protected activity took place prior to the incidents that were cited by Humphreys in his request that Complainant be terminated.

4. On **February 10, 2017,** Complainant's failure to properly secure a load in his trailer resulted in damage valued at $1,000. Complainant failed to report the damaged product to Humphreys despite having been previously coached to report all product and equipment accidents.

5. Humphreys learned that Glazer's, a major customer, began experiencing problems with Complainant soon after he was hired. The problems ultimately resulted in Complainant's being banned from Glazer's facility and the notice that Gomez would reject any load delivered by Complainant.

6. On **February 16, 2017**, Complainant had an accident at the facility of a different customer, resulting in a door being torn off a trailer. Complainant failed to report the accident to Humphreys, which is a ground for immediate discharge.

7. On **February 17, 2017,** Complainant was dispatched to deliver a time-sensitive order. Complainant altered his assigned route schedule without notifying Respondent. The result was the need to locate additional personnel to make the delivery on Saturday when the customer is typically closed. This resulted in Humphreys receiving a serious customer complaint.

[3] I find the same analysis would apply to the logging of maintenance time if it were found to constitute protected activity.

8. The same day, Complainant called Humphreys to report a flat tire. Without telling Humphreys, Complainant left the service area and failed to notify Humphreys. Humphreys did not become aware that Complainant was not where he was instructed to stay until the repair service crew notified Humphreys. Respondent was charged $150.00 for the service dispatch and charged for the tire repair at the truck stop.

9. Also the same day, Humphreys recommended that Complainant be terminated and detailed the events at Glazer's, the accident resulting in a door being torn off a trailer, Complainant's failure to report the accident, Complainant's failure to deliver a time-sensitive order, and the flat tire incident.

In his Response, Complainant does not controvert any of the above facts other than to assert that the declarations of Humphreys, Henderson, and Cole have "been submitted in bad faith and contains misleading, libel, hearsay and perjury information." Following receipt of the Response, the Court issued an Order to Show Cause explaining the summary decision procedure to Complainant. Although no further Response was filed, Complainant did file a 78-page Prehearing Statement of Position. I have considered the facts contained therein and find they do not create a dispute as to the material facts stated *supra.*

First, at page 48 Complainant lists nine instances of alleged protected activity. Most relate to the decal, logging hours, and the light bulb instances previously discussed. As to the other instances, I find these have never been timely placed before OSHA or the Court.

Second, Complainant disputes whether he ever received Respondent's employee handbook (p. 9). I make no finding regarding Complainant's receipt of the employee handbook or any issue regarding electronic signatures.

Next, Complainant disputes some of the facts surrounding the burned out light bulb (p. 14). But, the material facts that (1) Complainant made a complaint about the bulb, (2) the Respondent offered an immediate remedy, and (3) when Complainant declined to purchase the bulb, Respondent replaced the bulb at the first possible opportunity are not disputed. Further, it is undisputed that Respondent took no action against Complainant at that time.

Fourth, Complainant disputes the severity of the damage caused to the trailer door and whether the accident was reportable. Complainant does not dispute that he failed to report the accident to Humphreys, and Complainant does not dispute that Respondent's handbook states that "Failure to report a Company related accident" is a ground for immediate discharge.

Next, Complainant disputes some of the facts relating to the schedule change on February 17, 2017. Complainant does not dispute that he took it upon himself to alter his assigned route schedule and move on to the next order on the list. Complainant does not dispute that he did not notify Humphreys that he had changed the route schedule. Complainant does not dispute that the delivery was not made before the customer had closed for the day, that additional FirstFleet personnel made the delivery to the distributor on Saturday, or that the distributor, which is typically closed on Saturday, had to assemble personnel to come in to assist with

offloading and receiving. Complainant does not dispute that this resulted in Humphreys's receiving a serious customer complaint.

Lastly, Complainant disputes some of the facts related to the flat tire incident on February 17, 2017. However, Complainant does not dispute that Humphreys instructed Complainant to remain on the service road directly in front of the customer's facility, that Humphreys dispatched a repair service crew to meet Complainant there and repair the tire, that Complainant left the service area without notifying Humphreys, and that Respondent was charged $150.00 for the service dispatch and charged for the tire repair at the truck stop.

These uncontroverted facts, both individually and collectively, negate any possible inference of causation. Complainant has presented no evidence of specific facts that, if true, would allow a reasonable jury to find in his favor on the issue of causation. *Anderson*, *supra.* Consequently, Complainant cannot withstand the motion for summary decision on the issue of causation.

IV. ORDER

Based upon the foregoing and upon the entire record, Respondent's Motion for Summary Decision is hereby **GRANTED.** Case No. 2017-STA-00086 is **DISMISSED WITH PREJUDICE.**

So ORDERED.

LARRY W. PRICE
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).