



Issue Date: 02 February 2018

CASE NO.: 2017-STA-00028

*In the Matter of:*

ANNECIA FORT,  
*Complainant,*

v.

LANDSTAR TRANSPORTATION LOGISTICS, INC.,  
*Respondent.*

### **ORDER GRANTING SUMMARY DECISION**

Annecia Fort (hereinafter “Complainant” or “Fort”) alleges that Landstar Transportation Logistics, Inc. (hereinafter “Employer” or “Landstar”) retaliated against her in violation of the whistleblower protections in the Surface Transportation Assistance Act (STAA).

#### **Procedural History**

On September 15, 2015, Fort filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging retaliation in violation of the STAA. On December 23, 2016, after an OSHA investigation, the Secretary of Labor determined that Landstar had not violated the STAA. On January 25, 2017, Complainant appealed the Secretary’s determination and requested a hearing before the Office of Administrative Law Judges. By cover letter dated January 6, 2018, Employer filed a Motion for Summary Decision. By cover letter dated January 12, 2018, Complainant filed an Opposition to Employer’s Motion. This matter is currently scheduled for hearing on February 13, 2018 in Jacksonville, Florida.

#### **Statement of Facts**

Fort was employed as a Log Compliance Representative in Landstar’s Log Compliance Department from November 2004 until October 2015. Aff. of Nancy Hasty at ¶ 2. As a Log Compliance Representative, Fort was responsible for helping Landstar’s drivers achieve compliance with federal motor carrier safety regulations. *Id.* Fort’s retaliation complaint is based on three separate incidents, spanning from November 2014 to August 2015.

On November 21, 2014, Fort recommended that driver Michael Pease be disqualified from driving for Landstar because he accumulated 76 violations. Aff. of Mahal Cason at ¶ 2; CX-H.<sup>1</sup> Landstar agent Jim Stelts requested Director of Compliance Cason to review the

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<sup>1</sup> CX refers to Complainant’s Exhibits.

recommendation to disqualify Pease and consider additional training as an alternative. Aff. of M. Cason at ¶ 3. Stelts explained to Cason that the reason for the numerous violations was because Pease was an older driver and did not understand the ELD system. *Id.* Persuaded by Stelts, on November 24, 2014, Cason decided to send Pease to face-to-face training at a Landstar Orientation Center instead of disqualifying him. *Id.* at ¶ 2-3. Fort believed that Cason's decision was improper as a conflict of interest. TR 95:2-8. On November 25, 2014, upon learning that Pease was involved in two accidents on November 22, 2014, Fort escalated her concerns to Vice President for Safety and Compliance Michael Cobb. Aff. of M. Cason. at ¶ 2; CX-B. Landstar disqualified Michael Pease shortly after due to the accidents. Aff. of M. Cason at ¶ 2; TR 92:14-15.

On January 20, 2015, Fort attempted to contact driver Jose Martinez to provide log compliance counseling. *Id.* at ¶ 4. While Fort was in a meeting, Martinez called back and talked to another log compliance representative, Pauline Lassette-Norman. *Id.* Because the office was short-staffed and was dealing with an influx of calls, Supervisor Kimberly Sellers instructed the representative to tell Martinez to call back the next day. *Id.*; JS 18. When Fort discovered what had happened, Fort escalated her concerns to Mahal Cason. TR 132:10-17. A subsequent internal investigation concluded that advising a driver to call back at a later date was inappropriate and inconsistent with company and department practice. Aff. of M. Cason at 5; 9/14/15 TR 49-50.<sup>2</sup>

On August 11, 2015, Landstar underwent a mock Department of Transportation audit. Aff. of Jamie Lepke at ¶ 7. During the audit, auditors randomly selected the file for driver Angela Hurddrobneck. *Id.* The file indicated that Hurddrobneck had been in her sleeper berth for the past three weeks. *Id.* According to Landstar, a log compliance employee contacted Hurddrobneck, who confirmed that she had forgotten to change her driver status before putting her truck in the shop and verbally consented to Landstar remotely changing her status. *Id.* According to Fort, Landstar changed Hurddrobneck's status without notifying her. TR 180:11-15; 183:1-5. Although the parties dispute whether Hurddrobneck gave permission to Landstar to change the driver status, that dispute is not material to this decision, and I will assume for present purposes that Hurddrobneck did not give such permission.

On August 26, 2015, Fort brought to Human Resources a one-page complaint alleging that Landstar retaliated against her on account of reporting the incidents from November 2014, January 2015, and August 2015. JS 24. On September 14, 2015, Landstar suspended Fort with full pay and benefits while she applied for positions in other departments. JS 26-27. During her suspension, Fort was selected for the Carrier Qualifications Service Specialist position in the Carrier Qualification Department, where she has remained since October 7, 2015. JS 29; Aff. of N. Hasty at ¶ 12.

#### Standard for Summary Decision

Pursuant to 29 C.F.R. § 18.72, Employer filed a Motion for Summary Decision with this Court and Complainant filed an Objection to Employer's Motion. Employer will succeed on its

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<sup>2</sup> Fort transcribed a recording of a September 14, 2015 meeting with Landstar Human Resources Vice President Nancy Hasting and legal team, Richard Clark and Tom Harper.

motion if Employer shows (1) that there is no genuine dispute as to any material fact and (2) Employer is entitled to decision as a matter of law. 29 C.F.R. § 18.72(a). In assessing whether there is a genuine dispute as to any material fact, the Court must resolve any ambiguities and factual inferences in favor of the non-moving party. *Cobb v. FedEx Corp. Serv.*, ARB No. 16-030, ALJ No. 2010-AIR-024, slip op. at 4 (Sept. 29, 2017) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

### Analysis

To prevail on her STAA retaliation complaint, Complainant must show by a preponderance of the evidence that: (1) she engaged in protected activity; (2) she suffered an adverse employment action; and (3) the protected activity was a contributing factor to the adverse employment action. *Beatty v. Inman Trucking Management, Inc.*, ARB No. 13-039, ALJ No. 2008-STA-020, slip op. at 4-5 (May 13, 2014). If Complainant meets her burden of proof, the burden shifts to Employer to prove by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of [the protected activity.]” 49 U.S.C. § 42121(b); 49 U.S.C. § 31105(b)(1) (incorporating the AIR21 legal burdens of proof). The Employer will escape liability if it meets its burden.

Complainant must first prove that she engaged in protected activity. The STAA whistleblower provision provides, in relevant part:

**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; or

**(ii)** the person perceives that the employee has filed or is about to file a complaint or has begun or is about to begin a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order;

49 U.S.C. § 31105(a). The implementing regulations further provide:

It is a violation for any person to intimidate, threaten, restrain, coerce, blacklist, discharge, discipline, harass, suspend, demote, or in any other manner retaliate against any employee because the employee or a person acting pursuant to the employee's request has:

(1) Filed orally or in writing a complaint with an employer, government agency, or others or begun a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order; or

(2) Testified or will testify at any proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order.

29 C.F.R. § 1978.102(b). Complainant need not prove an actual violation. Rather, to qualify for protection under the Complaint Clause of the STAA, Complainant must have a reasonable belief that Employer engaged in a violation of a motor vehicle safety regulation. *See Guay v. Burford's Tree Surgeon's, Inc.*, ARB No. 06-031, ALJ No. 2005 STA-045, slip op. at 4 (June 30, 2008); *Dutkiewicz v. Clean Harbors Env'tl. Serv., Inc.*, ARB No. 97-090, ALJ No. 95-STA-34, slip op. at 3 (Aug. 8, 1997), *aff'd sub nom. Clean Harbors Env'tl. Serv., Inc. v. Herman*, 146 F.3d 12 (1st Cir. 1998). Whether a belief is reasonable is "based on the knowledge available to a reasonable person in the same factual circumstances with the same training and experience as the aggrieved employee." *See Allen v. Administrative Review Bd.*, 514 F.3d 468, 477 (5th Cir. 2008) (defining the objective standard in the context of a Sarbanes-Oxley whistleblower complaint). To be a reasonable belief, the belief must be both objectively and subjectively reasonable. *Warren v. Custom Organics*, ARB No. 10-092, ALJ No. 2009-STA-030, slip op. p. 10, n. 3 (ARB Feb. 29, 2012). In this case, Complainant argues that she engaged in three different instances of protected activity.

The first instance of alleged protected activity involved driver Michael Pease. In November 2014, Fort had recommended to her superiors the disqualification of Pease because he had accumulated 76 violations. Director of Compliance Mahal Cason decided not to disqualify Pease, believing his violations were a reflection of the fact that Pease was an older driver and did not understand the ELD system. Instead of disqualification, Cason decided to send Pease to a face-to-face training on how to use the ELD. On the day after Fort recommended his disqualification, Pease was involved in two accidents in the same day. After Fort learned of the accidents, Fort escalated her concern to Vice President Michael Cobb, and Landstar disqualified Pease shortly after.

Fort argues that Cason had an improper motivation for retaining Pease. Fort alleges that Cason retained Pease at the behest of a friend in a different department. Fort argues that this was a conflict of interest and the reason for the retaliation. Assuming that Fort's allegations are true for the purpose of ruling on this Motion, a reasonable person would not believe that this would constitute a violation of a motor vehicle regulation. Fort has not identified any regulation that she believes Cason violated, and I have not been able to find one. Therefore, the undisputed evidence shows that Fort did not engage in protected activity when she recommended Pease's disqualification or escalated her concern to Cobb.

The second instance of alleged protected activity involved driver Jose Martinez. On January 20, 2015, Fort attempted to contact Martinez to provide log compliance counseling. Martinez returned Fort's phone call, but Fort was in a meeting. Due to short-staffing, Supervisor Kimberly Sellers instructed Pauline Lassette-Norman to tell Martinez to call back the next day. When Fort discovered what had happened, Fort escalated her concerns to Director Mahal Cason. Fort alleges that as a result of this report, Landstar retaliated against her. A subsequent investigation concluded that asking a driver to call back at a later time was inappropriate and inconsistent with company and department practice.

Assuming Fort's allegations are true for the purpose of ruling on this Motion, a reasonable person would not believe that instructing a driver to call back the next day for log compliance counseling would constitute a violation of motor vehicle regulation. Fort has not

identified any regulation that she believes Sellers, Lassette-Norman, or Cason violated, and I have not been able to find one. A violation of internal policies and procedures may or may not implicate motor vehicle safety; in this case, because there is no evidence in the record of any safety concern – only a violation of company policy – it does not. *See, e.g., Abbasi v. Constellation Energy Group, Inc.*, ARB No. 06-136, ALJ No. 2006-ERA-007, -011, slip op. at pp. 11-12 (ARB June 30, 2008). The undisputed facts show that Fort did not engage in protected activity when she escalated her concerns to Cason.

The third instance of alleged protected activity involved driver Angela Hurddrobneck. In August 2015, Landstar underwent a mock Department of Transportation audit. During the course of the audit, auditors reviewed the logs of Hurddrobneck. The log showed that Hurddrobneck had been in her sleeper berth for three weeks. According to Employer, a log compliance department employee called Hurddrobneck. Hurddrobneck confirmed that she had simply forgotten to change her duty status before leaving her truck at the shop and verbally consented to Landstar changing her duty status remotely. According to Fort, Landstar improperly logged into Hurddrobneck's ELD and changed her status without the driver's consent.

Fort argues that Employer's actions constituted a violation of 49 C.F.R. § 395.15. That regulation reads in its entirety:

(a) Authority to use.

(1) A motor carrier that installs and requires a driver to use an automatic on-board recording device in accordance with this section before December 18, 2017 may continue to use the compliant automatic on-board recording device no later than December 16, 2019. Otherwise, the authority to use automatic on-board recording devices under this section ends on December 18, 2017.

(2) In accordance with paragraph (a)(1) of this section, a motor carrier may require a driver to use an automatic on-board recording device to record the driver's hours of service.

(3) Every driver required by a motor carrier to use an automatic on-board recording device shall use such device to record the driver's hours of service.

(b) Information requirements.

(1) Automatic on-board recording devices shall produce, upon demand, a driver's hours of service chart, electronic display, or printout showing the time and sequence of duty status changes including the drivers' starting time at the beginning of each day.

(2) The device shall provide a means whereby authorized Federal, State, or local officials can immediately check the status of a driver's hours of service. This information may be used in conjunction with handwritten or printed records of duty status, for the previous 7 days.

(3) Support systems used in conjunction with on-board recorders at a driver's home terminal or the motor carrier's principal place of business must be capable of providing authorized Federal, State or local officials with summaries of an

individual driver's hours of service records, including the information specified in § 395.8(d) of this part. The support systems must also provide information concerning on-board system sensor failures and identification of edited data. Such support systems should meet the information interchange requirements of the American National Standard Code for Information Interchange (ANSCII) (EIARS-232/CCITT V.24 port (National Bureau of Standards "Code for Information Interchange," FIPS PUB 1-1)).

(4) The driver shall have in his/her possession records of duty status for the previous 7 consecutive days available for inspection while on duty. These records shall consist of information stored in and retrievable from the automatic on-board recording device, handwritten records, computer generated records, or any combination thereof.

(5) All hard copies of the driver's record of duty status must be signed by the driver. The driver's signature certifies that the information contained thereon is true and correct.

(c) The duty status and additional information shall be recorded as follows:

- (1) "Off duty" or "OFF", or by an identifiable code or character;
- (2) "Sleeper berth" or "SB" or by an identifiable code or character (only if the sleeper berth is used);
- (3) "Driving" or "D", or by an identifiable code or character; and
- (4) "On-duty not driving" or "ON", or by an identifiable code or character.
- (5) Date;
- (6) Total miles driving today;
- (7) Truck or tractor and trailer number;
- (8) Name of carrier;
- (9) Main office address;
- (10) 24-hour period starting time (e.g., midnight, 9:00 a.m., noon, 3:00 p.m.)
- (11) Name of co-driver;
- (12) Total hours; and
- (13) Shipping document number(s), or name of shipper and commodity.

(d) Location of duty status change.

(1) For each change of duty status (e.g., the place and time of reporting for work, starting to drive, on-duty not driving and where released from work), the name of the city, town, or village, with State abbreviation, shall be recorded.

(2) Motor carriers are permitted to use location codes in lieu of the requirements of paragraph (d)(1) of this section. A list of such codes showing all possible location identifiers shall be carried in the cab of the commercial motor vehicle and available at the motor carrier's principal place of business. Such lists shall be made available to an enforcement official on request.

(e) Entries made by driver only. If a driver is required to make written entries relating to the driver's duty status, such entries must be legible and in the driver's own handwriting.

(f) Reconstruction of records of duty status. Drivers are required to note any failure of automatic on-board recording devices, and to reconstruct the driver's record of duty status for the current day, and the past 7 days, less any days for which the drivers have records, and to continue to prepare a handwritten record of all subsequent duty status until the device is again operational.

(g) On-board information. Each commercial motor vehicle must have on-board the commercial motor vehicle an information packet containing the following items:

- (1) An instruction sheet describing in detail how data may be stored and retrieved from an automatic on-board recording system; and
- (2) A supply of blank driver's records of duty status graph-grids sufficient to record the driver's duty status and other related information for the duration of the current trip.

(h) Submission of driver's record of duty status.

- (1) The driver shall submit, electronically or by mail, to the employing motor carrier, each record of the driver's duty status within 13 days following the completion of each record;
- (2) The driver shall review and verify that all entries are accurate prior to submission to the employing motor carrier; and
- (3) The submission of the record of duty status certifies that all entries made by the driver are true and correct.

(i) Performance of recorders. Motor carriers that use automatic on-board recording devices for recording their drivers' records of duty status in lieu of the handwritten record shall ensure that:

- (1) A certificate is obtained from the manufacturer certifying that the design of the automatic on-board recorder has been sufficiently tested to meet the requirements of this section and under the conditions it will be used;
- (2) The automatic on-board recording device permits duty status to be updated only when the commercial motor vehicle is at rest, except when registering the time a commercial motor vehicle crosses a State boundary;
- (3) The automatic on-board recording device and associated support systems are, to the maximum extent practicable, tamperproof and do not permit altering of the information collected concerning the driver's hours of service;
- (4) The automatic on-board recording device warns the driver visually and/or audibly that the device has ceased to function. Devices installed and operational as of October 31, 1988, and authorized to be used in lieu of the handwritten record of duty status by the FMCSA are exempted from this requirement.
- (5) Automatic on-board recording devices with electronic displays shall have the capability of displaying the following:

- (i) Driver's total hours of driving today;
- (ii) The total hours on duty today;
- (iii) Total miles driving today;
- (iv) Total hours on duty for the 7 consecutive day period, including today;
- (v) Total hours on duty for the prior 8 consecutive day period, including the present day; and
- (vi) The sequential changes in duty status and the times the changes occurred for each driver using the device.

- (6) The on-board recorder is capable of recording separately each driver's duty status when there is a multiple-driver operation;
- (7) The on-board recording device/system identifies sensor failures and edited data when reproduced in printed form. Devices installed and operational as of October 31, 1988, and authorized to be used in lieu of the handwritten record of duty status by the FMCSA are exempted from this requirement.
- (8) The on-board recording device is maintained and recalibrated in accordance with the manufacturer's specifications;
- (9) The motor carrier's drivers are adequately trained regarding the proper operation of the device; and
- (10) The motor carrier must maintain a second copy (back-up copy) of the electronic hours-of-service files, by month, in a different physical location than where the original data is stored.

(j) Rescission of authority.

- (1) The FMCSA may, after notice and opportunity to reply, order any motor carrier or driver to comply with the requirements of § 395.8 of this part.
- (2) The FMCSA may issue such an order if the FMCSA has determined that—
  - (i) The motor carrier has been issued a conditional or unsatisfactory safety rating by the FMCSA;
  - (ii) The motor carrier has required or permitted a driver to establish, or the driver has established, a pattern of exceeding the hours of service limitations of this part;
  - (iii) The motor carrier has required or permitted a driver to fail, or the driver has failed, to accurately and completely record the driver's hours of service as required in this section; or
  - (iv) The motor carrier or driver has tampered with or otherwise abused the automatic on-board recording device on any commercial motor vehicle.

49 C.F.R. § 395.15. My review of the regulation reveals no rule that would forbid Employer from changing the duty of status information of a driver. There are two other regulatory sections that may be applicable to the case at hand: 49 C.F.R. § 395.8(e) and 49 C.F.R § 395.30(d).



Section 395.8(e) reads:

- (e)(1) No driver or motor carrier may make a false report in connection with a duty status.
- (2) No driver or motor carrier may disable, deactivate, disengage, jam, or otherwise block or degrade a signal transmission or reception, or reengineer, reprogram, or otherwise tamper with an automatic on-board recording device or ELD so that the device does not accurately record and retain required data.
- (3) No driver or motor carrier may permit or require another person to disable, deactivate, disengage, jam, or otherwise block or degrade a signal transmission or reception, or reengineer, reprogram, or otherwise tamper with an automatic on-board recording device or ELD so that the device does not accurately record and retain required data.

49 C.F.R. § 395.8(e). The purpose of this regulation is to prohibit the falsification of driver logs. The undisputed facts show that Hurddrobneck's driver log indicated she had been in her sleeper berth for three weeks. Assuming that Fort's allegations are true for purposes of ruling on this Motion, I find that no reasonable person could believe that Landstar falsified the log. It would be unreasonable for Fort to believe that Hurddrobneck had been in her sleeper berth for that duration. Correcting an obvious mistake is not falsification.

Section 395.30 reads:

- (a) Accurate record keeping. A driver and the motor carrier must ensure that the driver's ELD records are accurate.
- (b) Review of records and certification by driver.
  - (1) A driver must review the driver's ELD records, edit and correct inaccurate records, enter any missing information, and certify the accuracy of the information.
  - (2) Using the certification function of the ELD, the driver must certify the driver's records by affirmatively selecting "Agree" immediately following a statement that reads, "I hereby certify that my data entries and my record of duty status for this 24-hour period are true and correct." The driver must certify the record immediately after the final required entry has been made or corrected for the 24-hour period.
  - (3) The driver must submit the driver's certified ELD records to the motor carrier in accordance with § 395.8(a)(2).
  - (4) If any edits are necessary after the driver submits the records to the motor carrier, the driver must recertify the record after the edits are made.
- (c) Edits, entries, and annotations.
  - (1) Subject to the edit limitations of an ELD, a driver may edit, enter missing information, and annotate ELD recorded events. When edits, additions, or

annotations are necessary, a driver must use the ELD and respond to the ELD's prompts.

(2) The driver or support personnel must annotate each change or addition to a record.

(3) In the case of team drivers, if there were a mistake resulting in the wrong driver being assigned driving-time hours by the ELD, and if the team drivers were both indicated in each other's records for that period as co-drivers, driving time may be edited and reassigned between the team drivers following the procedure supported by the ELD.

(d) Motor carrier-proposed edits.

(1) On review of a driver's submitted records, the motor carrier may request edits to a driver's records of duty status to ensure accuracy. **A driver must confirm or reject any proposed change**, implement the appropriate edits on the driver's record of duty status, and recertify and resubmit the records in order for any motor carrier-proposed changes to take effect.

(2) A motor carrier may not request edits to the driver's electronic records before the records have been submitted by the driver.

(3) **Edits requested by any system or by any person other than the driver must require the driver's electronic confirmation or rejection.**

(e) Coercion prohibited. A motor carrier may not coerce a driver to make a false certification of the driver's data entries or record of duty status.

(f) Motor carrier data retention requirements. A motor carrier must not alter or erase, or permit or require alteration or erasure of, the original information collected concerning the driver's hours of service, the source data streams used to provide that information, or information contained in any ELD that uses the original information and HOS source data.

49 C.F.R. § 395.30. It appears that if Fort's allegations are true, altering a driver log without the driver's consent may constitute a violation of 49 C.F.R. § 395.30(d).<sup>3</sup> However, at the time of the alleged incident, section 395.30 was not in effect. It was not until December 16, 2015 that the Department of Transportation and Federal Motor Carrier Safety Administration published a Final Rule that amended Chapter 395 to include section 395.30. 80 Fed. Reg. 78,385 (Dec. 16, 2015). And, that Final Rule did not go into effect until February 16, 2016. 80 Fed. Reg. 78,292 (December 16, 2015). The undisputed facts show that Fort had been a Log Compliance Representative at Landstar from November 2004 until October 2015. Her job required expertise in the regulatory requirements of logging hours of duty. A reasonable person with more than a decade of experience in log compliance would not have an objectively reasonable belief in August of 2015 that Land Star needed to obtain a driver's consent before correcting an obviously

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<sup>3</sup> Such alteration may not violate § 395.30, as the regulation is ambiguous as to timing – does the driver have to consent to an edit before it is made, or certify it after it is made? See § 395.30(a), (b)(4), (c)(2), and (d). However, as discussed above, I need not decide that issue: the regulation was not in effect at the time that Hurddrobnick's log was changed.

incorrect log. Thus, Fort's raising concerns about the change to Hurddrobneck's log does not constitute protected activity.<sup>4</sup>

### Conclusion

The undisputed evidence shows that Complainant did not engage in protected activity when she raised concerns about driver Pease, when she raised concerns about Sellers' instruction to driver Martinez to call back the next day for compliance counseling, or when she raised concerns about changing the log of driver Hurddrobneck.

### **ORDER**

Based on the foregoing, IT IS ORDERED:

1. Respondent's Motion for Summary Decision is GRANTED;
2. The complaint of Complainant Annecia Fort is DENIED; and
3. The hearing scheduled to begin on February 13, 2018 at 9:00 a.m. 0in Jacksonville, Florida is CANCELED.

**SO ORDERED.**

PAUL C. JOHNSON, JR.  
District Chief Administrative Law Judge

PCJ, Jr./ksw  
Newport News, Virginia

**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

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<sup>4</sup> In her opposition papers, Fort makes reference to having reported a supervisor's "conflict of interest and placing the company at risk" in November of 2014 and/or November of 2015. I find that this is a reference to the incident involving driver Pease, see Transcript of Complainant's deposition of December 18, 2017 at 78:20-24.

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](mailto: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).