



**Issue Date: 02 October 2018**

**Case Number: 2018-STA-00008**

*In the Matter of:*

**HARVEY TAYLOR,  
Complainant,**

v.

**RUAN TRANSPORTATION,  
Respondent**

**Appearances:** Steven Granberg, Esq.  
Attorney at Law, P.A.  
Albuquerque, New Mexico  
*For the Complainant*

Danny W. Jarrett, Esq.  
Jackson Lewis P.C.  
Albuquerque, New Mexico  
*For the Respondent*

**DECISION AND ORDER DISMISSING THE COMPLAINT**

This matter arises under the employee-protection provisions of 49 U.S.C. § 31105 of the Surface Transportation Assistance Act of 1982 (“STAA” or “the Act”), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, and the regulations of the Secretary of Labor published at 29 C.F.R. Part 1978. The STAA, in part, prohibits an employer from discharging an employee for refusing to operate a vehicle because such operation would violate a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security or because 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. 49 U.S.C. § 31105(a)(1)(B)(i) and (ii).

I have based my decision on all of the evidence admitted, relevant controlling statutory and regulatory authority, and the arguments of the parties. As explained in greater detail below, because I find that Harvey Taylor (“Complainant”) has not proven that he engaged in activity protected under the STAA, I dismiss his complaint.

## Procedural History

On October 3, 2017, Complainant filed a complaint with the State of New Mexico Health and Safety Bureau, which was forwarded to the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), alleging that Ruan Transportation (“Respondent”) terminated his employment on May 30, 2017 in retaliation for refusing to finish hauling a dispatched load after feeling too fatigued to safely drive. 49 U.S.C. § 31105(a). After investigating, OSHA’s Regional Supervisory Investigator dismissed the complaint on October 19, 2017, finding no violation of the Act. By letter dated October 30, 2017, Complainant timely filed objections to the findings and requested a hearing before the Office of Administrative Law Judges (“OALJ”). The matter was then assigned to me for hearing.

On April 11, 2018, Respondent filed a *Motion for Summary Decision* and a *Memorandum in Support of Motion to Dismiss* (“Motion”), requesting that Complainant’s case be dismissed before trial. I declined to do so in an *Order Denying Respondents’ Motion for Summary Decision and Changing Hearing Venue*, issued on April 20, 2018.

I then presided over a hearing on May 2, 2018 in Albuquerque, New Mexico.<sup>1</sup> Complainant’s Exhibits 1-8 were admitted into evidence, over Respondent’s objection to Exhibit 8, (TR at 5-6), and Respondent’s Exhibits 1-14 were admitted into evidence without objection, (TR at 6). I also admitted ALJ Exhibits 1-5. (TR at 7). Three witnesses, including Complainant, testified. (TR at 20-186). At the hearing, I established a post-hearing briefing schedule, allowing both sides until July 15, 2018 to submit closing briefs, and until July 30, 2018 to file any responses. (TR at 198). On July 16, 2018, Respondent submitted its *Post-Hearing Brief*, (“Resp. Br.”), and Complainant submitted his *Post-Hearing Brief*, (“Comp. Br.”). On July 30, 2018, Respondent submitted its *Reply to Complainant’s Post-Hearing Brief*, and Complainant submitted his *Response to Respondent’s Post-Hearing Brief*.

## Issues to be Decided

1. Did Complainant engage in protected activity on May 29, 2017 when he refused to finish delivering a dispatched load?
2. If so, was Complainant’s protected activity a contributing factor in Respondent’s decision to fire him?
3. If so, can Respondent show by clear and convincing evidence that it would have fired Complainant in the absence of the protected activity?
4. If not, what relief, if any, is Complainant entitled to?

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<sup>1</sup> I use the following abbreviations in this decision: “TR” for the official hearing transcript, and “RX” for a Respondent’s Exhibit.

## Stipulation<sup>2</sup>

- Complainant suffered an adverse employment action as defined under the Act.

## Summary of the Evidence<sup>3</sup>

### Hearing Testimony

Harvey Taylor (TR at 20-105); (TR at 184-186)

Complainant is a truck driver based in Roswell, New Mexico and has driven trucks for about 15 years. He began working for Respondent on November 26, 2007, and primarily drove a food grade tanker truck. He had no discipline or performance problems and his time with Respondent was uneventful, until May 29, 2017.

Complainant reported to work around noon on May 29, 2017, Memorial Day, a federal holiday. Complainant's terminal manager, Scott Apple, asked how he was doing. Complainant responded, "Like a T-bone steak" and lifted his shirt, displaying chigger bites on his chest and stomach which Complainant had acquired the previous week while on vacation. Complainant told Apple that the chigger bites were "not going to stop me from working." The chigger bites also had not affected Complainant's ability to drive a truck on May 28, 2017.

Complainant was dispatched on May 29 to pick up an empty trailer from a farm, drive it to a dairy, load it with milk and drop off the loaded trailer at the farm. He was then to pick up another dairy load. However, a storm came through the area and Complainant had to get out of his truck to disconnect the milk hoses; he was outside for about 10 to 15 minutes with the wind blowing and the dust kicking up around him. After he got back in his vehicle, Complainant noticed his eyes were blurry, itchy and watery. The chigger bites also aggravated the situation. After missing a street sign while driving to the next site, Complainant decided that it wasn't safe to continue driving given the difficulty he was having seeing. Complainant had a company cell phone with him at the time. Complainant did not call anyone to pick him up, even though company protocol is for drivers to call for a rescue if they ever feel unsafe to drive. Instead, Complainant continued to drive his truck and returned to the terminal on his own volition without incident, a total of about seven miles. There were places along the route where Complainant could have safely pulled off the road.

When Complainant returned to the terminal, he clocked out and told the on duty dispatcher that he had not picked up the final load and that someone else would have to do it

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<sup>2</sup> This stipulation was mutually agreed to during the hearing. (TR at 197).

<sup>3</sup> The summary of the evidence is not intended to provide a comprehensive account of all the evidence.

because he had to get home and take care of his eyes. Complainant did not tell the dispatcher he felt unsafe to drive. Complainant heard the dispatcher say, “If you walk out that door...,” and although he didn’t hear what came next, Complainant assumed the dispatcher was about to fire him. Complainant was able to drive his personal vehicle home about 6 miles away, also without incident. Complainant did not complete his required deliveries for May 29, 2017.

When Complainant arrived at work around noon the next day, he was called into a meeting with two of his supervisors, Mr. Apple and Mr. Bullard. Complainant told them what had happened the previous evening with the dispatcher, and Apple responded that Complainant was in fact fired.

Complainant then attempted to tell his side of the story about the issues with his eyes, telling them his eyes were blurry and watering from the dust and wind and, after missing a road sign, determined that he could continue to safely drive and that’s why he drove back to the terminal rather than finish the load. Apple then told Complainant that he was going to dismiss him for the day and think about it. On the morning of May 31, 2017, Apple called Complainant and informed him he was fired.

After the termination, Complainant became depressed and started having problems with his girlfriend. His alcohol intake tripled during this time.

Complainant was offered another driving position in June 2017, shortly after being terminated by Respondent. He did not accept the position because he believed the lifting requirement would be more than he could handle. About seven months later, Complainant accepted a driving position with Moki Dugway, where he still works as of the date of the hearing.

#### Scott Apple (TR at 107-162)

Scott Apple is currently a Dedicated Transportation Manager or Dedicated Terminal Manager with Respondent in Indiana, and is responsible for multiple terminals. He previously worked as terminal manager in Roswell. Respondent is a large nationwide company involved in all different aspects of transportation, including dairy and steel. It also has a logistics management wing. The Roswell, New Mexico location employs between 50 to 55 drivers.

Regarding Respondent’s safety procedures, the “captain of the ship safety bulletin” is a standard document that is typically posted in at least one location in every terminal location. This bulletin is also discussed at the third and fourth quarter safety meetings. The bulletin states, “If at any time you feel unsafe or feel you cannot complete a task safely, STOP and talk to your manager.” (RX 1) (emphasis in the original).

Apple also told all the Roswell drivers to call him if they ever felt unsafe. His cell phone number, the human resources hotline number, and Apple's boss's phone number were all listed in the Roswell office. Employees have previously reached out to him on his cell phone when he was not in the office. In twenty-five and a half months in Roswell, New Mexico, there was never a day Apple was not available to talk to a driver.

The night dispatcher called Apple on May 29 to inform him that Complainant would not be finishing his load. On the morning of May 30, Apple called the human resources official, Ms. Ross, to brief her on the situation. Apple exchanged emails with Ross and they determined that terminating Complainant was their only option.

Apple then had his May 30 meeting with Complainant. Apple told Complainant he was terminated. Complainant then said something like, "I was very upset, I was very frustrated. I'm tired of working long days on holidays, I just wanted to go home." Apple does recall Complainant mentioning that he got some dirt in his eyes, but doesn't believe Complainant ever said that he felt unsafe to drive because of it. Apple said there was never a mention of blurred vision, unsafe vehicle operation, never a mention that he couldn't see, and no mention that he had to stop in the road or that he missed a turn. At no point during his conversation with Complainant on May 30 did Apple interpret Complainant's comments as a suggestion that he had safety concerns about driving on May 29. Apple recalled that Complainant told him he did not want to drive because he was angry, upset, and unhappy about being asked to work long hours on a holiday.

Apple then told Complainant that he was not going to work that day and that they would speak tomorrow.

Apple sent an email to Ross shortly after his meeting with Complainant, summarizing what had happened in the meeting. The email states, in part,

When asked why he chose to leave before the end of [his] shift, [Complainant] replied, "I was angry and frustrated." He went on to complain of dirt that he had gotten in his eye from the previous load, he was struggling with the irritation of chigger bites and that he felt like he was being treated unfairly by dispatch by being required to work long hours on [h]olidays.

(RX 12).

Apple called Complainant on the morning of May 31 and told him that he was terminated. Apple considered Complainant's actions to be job abandonment with no mention of

safety issues or concerns. He believed Complainant was upset about working on a holiday and just wanted to go home.

All of the dairies Respondent services are located on dirt or gravel roads, and it is fairly common for drivers to encounter windy conditions, but Apple cannot remember a driver ever refusing to drive because of issues with dust or dirt. No other drivers reported they could not drive on May 29, 2017 because of dusty or windy conditions.

Chris Bullard (TR at 163-184)

Chris Bullard is the Dedicated Transportation Manager for Respondent in Roswell, New Mexico. Previously, he was the Dispatch Manager in Roswell. Bullard has also served as a Terminal Safety Instructor, for which he received specialized training.

Bullard stated that refusing to take a load is a big deal and there must be a pretty good explanation by the driver to avoid disciplinary action. Fatigue or illness would be examples where a driver could be released early.

Bullard had a pretty good working relationship with Complainant. He didn't have any issues with him and believed he was dependable and a good worker.

Bullard did not learn about Complainant's refusal to finish a load until the morning of May 30, 2017, when he spoke with Apple and attended the May 30 meeting between Apple and Complainant.

At that meeting, Bullard remembered Complainant saying he wanted to get off early on May 29 to see his mother, which Bullard remembered as an odd explanation because Complainant's mother is elderly, and Complainant didn't leave the office until 10:30 p.m. Bullard does not remember Complainant raising any safety concerns during the meeting. He does not remember Complainant mentioning anything about getting dust or dirt in his eyes, or saying anything about suffering from chigger bites. He does not remember Complainant saying at any point that he felt unsafe to drive on May 29. Bullard also made himself available to drivers to call if they had any issues.

**Legal Framework**

The STAA's whistleblower protection provisions provide, in general, that a covered employer "may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment," because the employee engaged in certain protected activities. 49 U.S.C. § 31105(a)(1).

In order to succeed in this case under the applicable legal framework, Complainant must establish that: (1) he engaged in protected activity under the STAA; (2) Respondent took an adverse employment action against him; and (3) his protected activity was a contributing factor in that adverse action. If Complainant fails to prove any one of these elements, the entire complaint fails. *See, e.g., Coryell v. Ark. Energy Servs., LLC*, ARB No. 12-033, ALJ No. 2010-STA-042, slip op. at 4 (Apr. 25, 2013). The initial, and most critical, issue presented here is whether Complainant has established that he engaged in protected activity under the STAA.

As is relevant here, the STAA protects employees from retaliation for “refus[ing] 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.” 49 U.S.C. § 31105(a)(1)(B).

Subsection (1)(B)(i) is commonly referred to as the “actual violation” subsection and deals with conditions as they actually exist, while subsection (1)(B)(ii) is known as the “reasonable apprehension” subsection and deals with conditions as a reasonable person would believe them to be. *Melton v. Yellow Transportation, Inc.*, ARB No. 06-052, OALJ No. 2005-STA-002, slip op. at 5 (Sept. 30, 2008). Complainant alleges violations of both subsections (i) and (ii). For the reasons set forth in greater detail below, I find he has proven neither.

### **Essential Findings of Fact**

After a May 29, 2017 dust storm caused irritation in Complainant’s eyes blurring his vision and allegedly affecting his ability to operate his truck, Complainant did not pull off the road and call dispatch or anyone else for assistance on his company issued cell phone. Instead, he continued to drive the truck seven miles back to the terminal, without incident. Upon arrival at the terminal, Complainant told the dispatcher that he would have to get someone else to finish the run as he was finished driving. Complainant did not inform the dispatcher, or anyone else on May 29 of any safety basis for his refusal to drive. Instead, he told the dispatcher that he had to get someone else to finish the load because he didn’t have time, though Complainant had not reached his hours of service limitations. Complainant did complain to the dispatcher about having to work late on the holiday. Complainant left the terminal and was able to drive his personal vehicle home six miles, without incident.

Complainant met with the terminal manager, Scott Apple, and Chris Bullard, dispatch manager, on May 30, 2017. After being told he was being terminated for refusing to finish a load, Complainant told them that the reason he did not finish the load was because he was angry and frustrated, believing he was being treated unfairly by dispatch having to work long hours on a holiday, had had enough and just wanted to go home; Complainant did state he had dust in his

eyes and that nothing was going right that day. Complainant did not tell anyone at this May 30 meeting that the reason he refused to finish the load was because he had safety concerns operating the truck caused by the irritation in his eyes, or words to that effect.

Apple already made the decision to terminate Complainant before meeting with him on May 30 for abandoning his route. After hearing from Complainant, Apple agreed to give the decision to terminate some thought. On May 31, 2017, Apple told Complainant he had not changed his mind.

### **Conclusions of Law**

#### **Protected Activity**

To establish that he engaged in protected activity under the actual violation subsection, Complainant must show that he “informed [Respondent] of the safety basis for his refusal to drive” and “that an actual violation of a regulation would have occurred.” *Wrobel v. Roadway Express, Inc.*, Case No. 2000-STA-48, p. 7 (ALJ Aug. 22, 2001). “A reasonable belief that there was a violation of a regulation is not enough.” *Id.* Furthermore, to establish protected activity under the reasonable apprehension subsection, Complainant must show that “a reasonable individual in the circumstances then confronting the employee would conclude that the hazardous safety or security condition establishe[d] a real danger of accident, injury, or serious impairment to health,” and that he “sought from [Respondent], and [was] unable to obtain, correction of the hazardous safety or security condition.” 49 U.S.C. § 31105(a)(2). Therefore, for Complainant’s activity to be protected under either subsection, he must have communicated to Respondent the safety basis for his refusal to drive.

Complainant did not inform employer of the safety basis of his refusal to drive at the time of the refusal or at the meeting on May 30 before he was first told that he had been terminated. Rather, he argues that because Apple agreed to reconsider the termination and Complainant mentioned the dust and the chigger bites later in the conversation, Complainant engaged in protected activity before his actual termination on the morning of May 31.

I find that Complainant’s casual mention of dust and chigger bites in the May 30 conversation does not rise to the level of protected activity. I credit Apple and Bullard’s accounts of the events on May 30, because although there were minor inconsistencies in their recollection of the meeting, these inconsistencies are inconsequential and reasonable in light of the fact that they were attempting to recall a meeting that had taken place almost a year ago.

An Employer is not expected to read a driver’s mind. If a driver is experiencing a physical condition, illness, or malady, affecting his or her ability to safely drive or operate a vehicle, he or she must explicitly say so. When Complainant said he had dust in his eyes, Apple



could have followed up and asked, “Did you feel unsafe?” But there is no legal requirement to do so. It was up to the Complainant to sufficiently raise the issue of a safety concern caused by eye irritation and give Respondent an opportunity to correct the condition. Here, there were still several hours before Complainant reached his hours of service limits. Employer could have had Complainant rinse and wash his eyes and rest at the terminal, then try to drive an hour or two later. But Complainant immediately left the terminal after dropping off the truck before giving Respondent the opportunity to correct the unsafe condition, assuming there was one to begin with.

I find that Complainant mentioned dust and the chigger bites in the May 30 meeting, but that this brief mention did not include any indication he felt the dust or the chigger bites created a situation that would make it unsafe for him to drive. Rather, he mentioned these issues to Apple and Bullard as part of his explanation for why he was angry and did not want to continue driving. He was attempting to describe his mental state and express to them why he was frustrated, not that he reasonably believed he was unable to drive because of his physical condition.

Complainant’s actions on May 29 also reinforce the conclusion that he was safely able to drive, but simply decided that he didn’t want to drive anymore. Instead of calling the dispatcher, Apple, Bullard, or anyone else to come pick him up, Complainant continued to drive the truck back to the dispatch office, seven miles away, and then drove another six miles to his home. On this point, it is not the distance Complainant drove after ostensibly concluding that it was unsafe to do so, but that he continued driving at all, despite the apparent risk of serious injury to himself and the public because of impaired vision. Therefore, I find that Complainant did not engage in protected activity because he never raised any safety concerns or informed Respondent that he believed he was unfit to drive because of impaired vision, or anything equivalent.

Additionally, section (b)(i) only covers a situation where Complainant’s operation of the truck would actually result in a violation of a regulation, standard or order related to commercial vehicle safety, health or security. In other words, a good faith belief that a violation would occur is not enough. Here, Complainant continued to operate the truck after concluding the irritation to his eyes caused by the dust storm was such a visual impairment that it raised a safety concern. Further, Complainant immediately drove his own vehicle home from the terminal after returning the truck. Both circumstances demonstrate that there was no actual violation.

Finally, for a Section b(ii) violation to occur, a complainant must seek and be unable to obtain correction of the unsafe condition in order to invoke the protection under this provision. He must communicate or attempt to communicate safety concerns to the Employer. Here, Complainant did neither. He made no mention of or reference to safety concerns to the dispatcher upon returning to the terminal on May 29, 2017. Complainant did not give Employer any opportunity to fix or correct the safety concern, to include flushing Complainant’s eyes

with water, or having him rest and relax at the terminal and attempting to drive the vehicle before reaching his hours of service limitations. Instead, Complainant's conversation with the dispatcher was limited to being angry about working on a holiday then immediately departing the terminal site for home. The next day, Complainant made general references to Apple and Bullard about eye irritation and fatigue but did not convey the extent of the impairment or that the refusal to drive the day before was because doing so would result in a danger to himself or the public. Of course, by that time it was too late for Employer to try and address the safety concerns ostensibly raised by Complainant's eye irritation.

#### Protected Activity as a Contributing Factor in Adverse Action

Alternatively, even if Complainant's mention of dust and chigger bites during the May 30 meeting does constitute protected activity under the STAA, his claim still falls because I also find that the protected activity was not a factor in Complainant's termination.

A contributing factor is "any factor, which, alone or in connection with other factors, tends to affect in any way the outcome of the decision." *Williams v. Domino's Pizza*, ARB 09-092, slip op. at 5 (ARB Jan. 31, 2011). If a complainant makes this showing, an employer can avoid liability by demonstrating with clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the protected behavior. 49 U.S.C. § 42121(b)(2)(B)(ii).

Again, I find that Apple and Bullard were not aware at any point that Complainant felt unsafe to drive. Therefore, they could not have used the alleged safety complaints as a reason for his termination. In addition, I find that Respondent decided to terminate Complainant before he made any alleged safety complaints. Apple told Complainant he was terminated before Complainant mentioned that his eyes were irritated from the dust and exacerbated by the chigger bites. Although Apple told Complainant he would take the day to think it over before officially terminating Complainant, the decision to terminate was made before the May 30 meeting. Nothing Complainant said in the meeting changed Apple's decision and Complainant was officially notified of his termination on May 31, 2017. I therefore find that even if Complainant engaged in protected activity, Respondent did not use the alleged protected activity as a factor in his termination.

#### **CONCLUSION AND ORDER**

Complainant has not met his burden to establish by a preponderance of the evidence that he engaged in protected activity on May 29 or 30, 2017. Complainant was also unable to establish that any alleged protected activity was a factor in his termination. Accordingly, IT IS ORDERED that the complaint filed by Harvey Taylor on October 3, 2017 is hereby DISMISSED.

**SO ORDERED:**

**STEPHEN R. HENLEY**  
Chief 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](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).