U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 02 October 2019

Case No.: 2018-STA-00074

In the Matter of:

CORTEZ WEBB,
Complainant,

v.

W.L. PETREY,
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 "Act") and the regulations of the Secretary of Labor published at 29 C.F.R. Part 1978.

Procedural Background

Cortez Webb ("Complainant" or "Webb") filed a complaint with the Occupational Safety and Health Administration ("OSHA") on April 28, 2018, alleging that W.L. Petrey Trucking ("Respondent" or "Petrey") fired him on February 10, 2015 in retaliation for raising safety concerns about the truck he was driving.[1] OSHA concluded the claim was not timely filed and dismissed it on July 25, 2018. Complainant then requested a hearing before the Office of

[1] The employee protection provisions of the STAA provide that a covered employer may not take adverse employment action against an employee because the employee (i) has filed a complaint or testifies about "a violation of a commercial motor vehicle safety or security regulation, standard, or order," 49 U.S.C. § 31105(a)(1)(A); (ii) "refuses to operate a vehicle because the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety or health," § 31105(a)(1)(B)(i)[1]; (iii) "refuses to operate a vehicle 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)(ii); or (iv) "accurately reports hours on duty pursuant to chapter 315," § 31105(C), 29 C.F.R. § 1978.102(c)(2). Generally speaking, in order to prevail in a retaliation case brought under the STAA, a Complainant must prove: (i) that he engaged in protected activity; (ii) that his employer took an adverse employment action against him; and (iii) that the protected activity was a contributing factor in the Employer's decision to take the adverse employment action. If a Complainant satisfies this initial burden by a preponderance of the evidence, an Employer may avoid liability by demonstrating by clear and convincing evidence that it would have taken the same adverse action even if the Complainant had not engaged in the protected activity.

Administrative Law Judges ("OALJ"), which I held in Urbana, Illinois on June 20, 2019.[2] Complainant, representing himself, and Respondent were in attendance. In addition to Joint Exhibit 1, I admitted into evidence Complainant's Exhibits 1-4 and Respondent's Exhibits 1-8, 10 and 12.[3] (Tr. 7-10.) Additionally, at Complainant's request, I held the record open 30 days post-hearing to allow the opportunity to file additional documentation. (Tr. 129-131.) On June 25, 2019, Complainant filed an additional 14 pages, which the court has marked as CX 5.[4] Three witnesses testified, including Complainant. (Tr. 14-127.)

I have based my decision on all of the evidence, relevant controlling statutory and regulatory authority, and the arguments of the parties.[5]

As explained in greater detail below, Complainant did not file his claim with OSHA within the 180-day filing deadline and I find he has not established grounds to equitably toll the time period. Accordingly, I dismiss his complaint without determining whether he engaged in activity protected under the Act or, if he did, whether such activity contributed to losing his job.[6]

[2] On May 16, 2019, I issued an order denying Respondent's *Motion to Dismiss or in the Alternative Motion for Summary Decision* , concluding whether the filing deadline may be equitably tolled in this case was a question of fact, which could not be resolved through a motion for summary judgement.

[3] I use the following abbreviations in this decision: "Tr." for the official hearing transcript; "CX" for a Complainant's Exhibit; "RX" for a Respondent's Exhibit; "ALJX" for an Administrative Law Judge's Exhibit; and "JX" for a Joint Exhibit.

[4] CX 5 is a 14-page document, consisting of a cover page, job search, a photograph of truck 814, a duplicate of RX 1, a repair list of truck 814, and starter and exhaust system research. CX 5 is ADMITTED into evidence.

[5] In *Austin v. BNSF Railway Co.*, ARB No. 17-024, ALJ No. 2016-FRS-00013, PDF at 2 n. 3 (ARB Mar. 11, 2019) (per curiam), the Administrative Review Board ("ARB") noted that an administrative law judge ("ALJ") need not include a summary of the record in the Decision and Order, as it is assumed that the ALJ reviewed and considered the entire record in making his or her decision. The ARB stated that what is more helpful for its review of whether the ALJ's findings of fact are supported by substantial evidence of record is a tightly focused set of findings of fact. Accordingly, in this Decision and Order I focus specifically on findings of fact pertinent to the issues in dispute. I have, however, reviewed and considered the *entire* record.

[6] As a self-represented complainant lacking legal expertise, I provided Mr. Webb "with a degree of adjudicative latitude" throughout the case. *Hyman v. KD Resources*, ARB No. 09-076, ALJ No. 2009-SOX-020, PDF at 8 (ARB Mar. 28, 2010) (*citing Ubinger v. CAE Int'l*, ARB No. 07-083, ALJ No. 2007-SOX-036, PDF at 6 (ARB Aug. 27, 2008)). However, while a self-represented litigant may be held to a lesser standard than that of legal counsel in procedural matters, the burden of proving the elements necessary to sustain a claim of retaliation, or establish the basis for equitable tolling of a filing deadline, is no less. *See Flener v. H.K. Cupp, Inc*., Case No. 90-STA-42, PDF at 3 n. 2 (Sec'y Oct. 10, 1991). In other words, as the complaining party, it was Mr. Webb's burden to demonstrate why equitable principles should be applied to toll the limitations period. *Wilson v. Sec'y, Dep't of Veterans Affairs*, 65 F.3d 402, 404 (5th Cir. 1995). I find that he has not satisfied that burden.

Essential Findings of Fact

° W.L. Petrey Novelty, Inc., ("Petrey") a division of W.L. Petrey Wholesale, is a direct store delivery merchandiser, operating in some 31 states across the United States. Cortez Webb ("Complainant" or "Webb") began working for Petrey on September 30, 2014. (JX-1.) After successfully completing initial training, during which he was accompanied on his route by senior members of the company, Webb became one of about 48 Petrey drivers. Webb's duties included servicing Circle K convenience stores in and around central Illinois, making deliveries to 6-7 stops on a designated route and often setting up displays at these locations. Webb drove one of Respondent's vehicles to make his deliveries. (Tr. 51-52.)

° On December 18, 2014, District Manager Ken Pick gave Webb a performance review. (RX-1.) While Webb was doing some tasks well, Pick voiced several concerns. He mentioned in particular Webb's general lack of a sense of urgency, which led to late starts and not keeping his route on time. Additionally, Pick told Webb he needed to keep his truck and the shed he used to store company supplies better organized and that he was not doing well at executing distribution of force outs.

° On December 31, 2014, Webb received a verbal warning for not starting routes on time. On January 8, 2015, Webb received a written warning for not starting routes on time and another written warning on February 6, 2015 for not following directions. (JX-1.)

º Prior to February 9, 2015, Webb had never refused to drive one of Respondent's trucks. While generally complaining it was inadequate, Webb never voiced or filed any specific complaints that the truck he was assigned to drive was hazardous or unsafe or that driving it would result in serious injury to himself or others.

º On February 9, 2015, the W.L. Petrey truck that Webb was driving broke down and would not restart. Following company procedure, Webb called Pick, who was coincidentally close by and came to assist. According to Pick, Webb was upset, angry, and disrespectful. Webb told Pick that "even if the truck was repaired, I do not want to drive it anymore and will not drive it anymore," or words to that effect. Webb told Pick he wanted a new Ford F-450, which Webb said Petrey had promised when he started working for them. (Tr. 75, 80-81.) Webb did not give Petrey the opportunity to repair the truck before telling Pick he would not drive it again.

º After speaking with Pick, Petrey's then-director of operations, Terry Easterwood, fired Webb on February 9, 2015. According to Easterwood, his reasons were Webb's consistently late starts and disorganization, although the deciding factors were Webb's disrespect to his supervisor, Ken Pick, on February 9, 2015 and that the truck was still messy. (Tr. 108.)

º Before Webb's truck broke down on February 9, 2015, it passed the Department of Transportation's mandatory annual inspections in 2014 and 2015. (Tr. 106.)

- Petrey never refused payment to drivers for repairs or maintenance; in one instance, Webb replaced the truck's starter, and the company reimbursed him. (Tr. 59.) After the truck Webb was driving on February 9, 2015 was repaired, none of the new drivers reported any safety issues with it. (Tr. 96.)

- Webb is African-American and Pick and Easterwood are Caucasian. Webb believed he was fired by Petrey because of his race and, sometime between February 9, 2015 and May 11, 2015, Webb retrieved an Equal Employment Opportunity Commission (EEOC) complaint form from the EEOC website by using the internet service at the local public library. (Tr. 36; RX-3.) Among the options on the form was "Discrimination Based on (check the appropriate box(es): Retaliation." However, Webb only checked the box indicating "discrimination based on race." In the remarks section, Webb typed "I believe I have been discriminated against because of my race, Black, in violation of Title VII of the Civil Rights Act of 1964, as amended." (RX-3.) Webb did not reference retaliation on the form or include allegations of any safety concerns he had with his truck.

- On May 11, 2015, Webb signed a formal EEOC complaint against Petrey, alleging he was fired on February 9, 2015 because of his race. Webb used the free fax machine in the public library to send the complaint to the EEOC on May 13, 2015. (Tr. 34.) The EEOC closed Webb's charge of employment discrimination on July 6, 2015, concluding that it was unable to establish any violations. The EEOC advised Webb he had 90 days from receipt of the notice of dismissal to "file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court." Webb did not file a lawsuit against Petrey for employment discrimination. (RX-3.) There is no evidence that Webb asked the EEOC for advice or that EEOC misled Webb in a cause of action.

- Webb subsequently met with a lawyer,[7] who declined to take the case. (JX-1; Tr. 24.)

- Webb was living on his own in an apartment in January 2015. He paid for activities of daily living like a gym membership, grocery shopping, bills, and phone service. After he was fired from his job with Petrey, Webb was unable to continue paying rent and he was eventually evicted at the end of July 2015, shortly before the 180-day period for filing a complaint expired. (Tr. 17.)

- After being evicted, Webb was without a permanent residence, living in a homeless shelter, sharing a condo or subletting, until November 2018 when he could afford the deposit on his own apartment. (CX-4; RX-6, Tr. 25-29.) Webb enrolled in classes at Parkland Community College for the summer 2015 term, eventually withdrawing in the fall of 2016 for financial reasons. (CX-2; RX-4.)

[7] It is unclear when this meeting took place. The joint stipulation reflects that "shortly after July 6, 2015 – Mr. Webb paid $150 to discuss this matter, but the lawyer declined to represent him." (JX-1.) However, at the hearing, Webb testified the meeting occurred in April or May 2017. (Tr. 24.) The exact date is not material to the issue of equitable modification or tolling as either date demonstrates Webb was capable of finding and meeting with an attorney about his case, despite intermittent periods of homelessness. However, at best, he waited another year after meeting with a lawyer before filing his retaliation complaint with OSHA; at worst, nearly three years later. Either circumstance reveals a lack of diligence in pursuing his legal rights.

- After being fired from Petrey, Webb worked a number of jobs, beginning with a position at Dick's Sporting Goods in the fall of 2015. He was laid off from this job and started with HH Gregg in January 2016. After being fired from HH Gregg, Webb worked for Subaru of Champaign County in November 2016, but was fired in the fall of 2017. At this point, Webb was living temporarily in a condo, but was evicted near the end of February 2018. In February 2018, Webb began working in Towneplace Suites by Marriott and took on a second job at FedEx to earn more money. (Tr. 23-29.)

- At the time of the EEOC filing, Webb was unaware that OSHA investigates complaints of retaliation under STAA's whistleblower protection provisions. Webb became aware that OSHA investigates such complaints after speaking with the National Association for the Advancement of Colored People ("NAACP") in February 2018. (Tr. 29.) After talking with the NAACP, Webb concluded Petrey retaliated against him for raising safety concerns about his truck. Consequently, Webb filed a complaint with OSHA on April 28, 2018. (RX-7.)

- OSHA dismissed Webb's complaint as untimely filed on July 25, 2018. In his August 7, 2018 request for hearing, Webb explained, "I missed my 180-day mark to file with OSHA due to the fact I was homeless and not able to find support with such matter." (RX-8.)

- If he was aware at the time of his termination that a company cannot fire its employees for reporting safety concerns about the trucks they were driving, Webb admits he was capable of sending a complaint to OSHA within the filing deadline. (Tr. 35-36.)

Timeliness of the Complaint

Under the statute and applicable regulations, an STAA complaint must be filed no later than 180 days after the date that an alleged violation of the Act occurs, or after the date on which the employee became aware of the violation. 29 C.F.R. § 1978.103(d). Here, Petrey fired Webb on February 9, 2015 and Webb filed his retaliation complaint with OSHA on April 28, 2018, some three years, two months and 18 days later. However, the STAA implementing regulations provide that the 180-day complaint-filing period "may be tolled for reasons warranted by applicable case law." 29 C.F.R. § 1978.103(d).

The Department of Labor's Administrative Review Board (ARB) has found equitable tolling appropriate in at least four types of circumstances: (i) where the "respondent has actively misled the complainant regarding the cause of action"; (ii) when "the plaintiff has in some extraordinary way been prevented from filing his or her action," such as a debilitating illness, injury, or natural disaster; (iii) when "complainant has raised the precise statutory claim in issue but has done so in the wrong forum"; and (iv) where the "respondent's own acts or omissions have lulled the complainant into foregoing prompt attempts to vindicate his or her rights." *Brofford v. PNC Investments LLC*, ARB No. 2018-03, ALJ No. 2017-CFP-02, PDF at 2 (ARB Feb. 14, 2019).[8] This list is not exhaustive[9] and Complainant submits that, in addition to filing

[8] The Seventh Circuit, under which this case arises, adds an additional requirement that the petitioner otherwise had been diligently pursuing his rights. *See Boulb v. United States*, 818 F.3d 334, 339-40 (7th Cir. 2016).

his claim with the wrong agency, the filing deadline should be tolled because "I have suffered and am still suffering both mentally and physically from having to endure unfair hardship associated with homelessness." (RX-8.)

Homelessness

Homelessness may warrant equitable tolling if it has in some extraordinary way prevented a complainant from filing his action. In order to prove those circumstances, a complainant must, at a minimum, establish that (i) he was homeless; and (ii) his homelessness was the cause of the failure to timely file by preventing him from being capable of managing his affairs or understanding his legal rights and acting on them. *Jeffrey v. Hegarty*, Case No. 5:15-cv-04506-HRL, 2017 U.S. Dist. LEXIS 47006, at *16-17 (N.D. Cal. Mar. 29, 2017) ("As for homelessness, courts do not consider that to be an extraordinary circumstance warranting tolling where it appears that the plaintiff is still able to pursue claims, despite being homeless.").[10]

A petitioner must make "a particularly strong showing" to warrant equitable tolling for homelessness. Evidence that indicates a petitioner is able to independently manage his affairs will make it difficult to make such a showing. *See Hall v. EG&G Defense Materials, Inc.*, ARB No. 98-076, ALJ No. 97-SDW-009, PDF at 2, 3 (ARB Sept. 30, 1998) (petitioner failed to meet his burden, in large part because he signed a divorce settlement agreement; testified in a worker's compensation proceeding; filed a complaint of disability and religious discrimination; and filed a claim for disability benefits during the statutory filing period).

As Complainant was fired on February 9, 2015, he had until August 8, 2015 to file his retaliation complaint with OSHA. He was not evicted from his apartment until the end of July 2015. The evidence demonstrates that Complainant was able to use the local library to research his case and eventually file a complaint with the EEOC in May 2015, all within the filing period. Even after being evicted from his apartment in July 2015, Complainant was able to consistently maintain activities of daily living, to include finding employment and taking classes at the local community college. Though eventually declining to take the case, Complainant was also able to discuss his case with a lawyer. Complainant could have filed his OSHA complaint within the 180-day filing period and certainly well before April 28, 2018. He waited that long only because he was not aware that employers can't fire workers for raising safety concerns about the trucks they are driving. Ignorance of the law is generally not a factor warranting equitable modification and is not one here. *See Flood v. Cendant Corp*., ARB No. 04-069; ALJ No. 2004-SOX-00016, PDF at 4 (ARB Jan. 25, 2005).

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[9] The ARB has made clear that other situations may also warrant equitable tolling. *See, e.g., Woods v. Boeing-South Carolina*, ARB No. 11-067, ALJ No. 2011-AIR-009, PDF at 8 (ARB Dec. 10, 2012).

[10] *See also Barkley v. Potter*, Case No. 06-C-0002, 2006 U.S. Dist. LEXIS 30471, at *10 (E.D. Wis. May 15, 2006) (acknowledging that petitioner's health problems and homelessness presented "unfortunate circumstances under which she was living" that "may offer an explanation" for, but do not justify, her late filing); *Kennedy v. Steel Warehouse, Inc.*, Cause No. S88-162, 1991 U.S. Dist. LEXIS 20389, at *8-9 (N.D. Ind. Dec. 5, 1991) (finding that the claimant, who had been homeless and in prison during the filing period, did not satisfy the diligence requirement for equitable tolling); *Holland v. Western Dev. Corp.*, 799 F. Supp. 181, 183 (D.D.C. 1992) (finding equitable tolling inappropriate where the claimant, while homeless for several months after filing her discrimination complaint, was able to pursue a separate claim for unemployment benefits).

The court commends Complainant for overcoming significant challenges in his life and persevering in the face of great adversity. However, the narrow legal issue before me is whether Complainant's homelessness warrants equitable modification of the STAA filing limitations. I find it does not because it was not the cause of the failure to timely file a complaint with OSHA as it did not prevent him from managing his personal affairs or understanding his legal rights and acting on them.

EEOC Filing

Complainant also submits that his earlier EEOC filing warrants equitable tolling of the STAA filing period because he raised the precise statutory claim at issue here but did so in the wrong forum. I disagree.

The Seventh Circuit's sparse case law on the "precise statutory claim" rationale for equitable tolling suggests that the claims must be strictly identical. *See Husch v. Szabo Food Service Co.*, 851 F.2d 999, 1003-04 (7th Cir. 1988) (finding equitable tolling justified where a plaintiff asserted an identical claim in the wrong forum where the plaintiff was "unable to decipher the contradictory and confusing corporate structure of [the respondent] in order to determine the exact state in which she allegedly was discriminated against."); *Granger v. Rauch*, 388 Fed. Appx. 537, 542-43 (7th Cir. 2010) (finding tolling appropriate where the claimant mistakenly filed both due process claims and medical claims in the same forum).[11] The ARB also appears to require identical claims. *See Komatsu v. NTT Data, Inc./Credit Suisse*, ARB No. 16-069, ALJ No. 2016-SOX-024, PDF at 4-5 (ARB Mar. 13, 2018) (affirming the ALJ's finding that a complaint filed with the Wage and Hour division did not constitute the same statutory claim because nothing in the Wage and Hour summary of the complaint "indicates or suggests that the Complainant's WHD complaint in any way implicates SOX.").[12]

Complainant's EEOC complaint did not contain any allegation that Petrey committed an act constituting a violation of the STAA; instead he only alleged discrimination under the Civil Rights Act, despite the opportunity to check the "retaliation" box on the form. I find Complainant's EEOC complaint that Petrey fired him because of his race is not the same statutory claim asserting he is entitled to relief because he engaged in activity protected under the transportation whistleblower statutes. In other words, under the facts of this case, I draw no

[11] I note that the Seventh Circuit was applying equitable tolling "as interpreted by the Illinois courts."

[12] *See also Udofot v. NASA/Goddard Space Center*, ARB No. 10-027, ALJ No. 2009-CAA-007, PDF at 7 (ARB Dec. 20, 2011) (finding that the complainant's work-safety complaints with the EEOC and MSPB did not constitute filing the precise statutory claim because those filings were intended to address other statutes); *Schafermeyer v. Blue Grass Army Depot*, ARB No. 07-082, ALJ No. 2007-CAA-001, PDF at 14 (ARB Sept. 30, 2008) (finding that complainant's MSPB complaint was not the same statutory claim because the complaint did not assert "that he was entitled to relief because he engaged in protected activities under the environmental whistleblower statutes, [the respondent] knew of these activities, and as a result, [the respondent] terminated his employment"); *Lewis v. McKenzie Tank Lines, Inc.*, Case No. 1992-STA-20, PDF at 2-3 (Sec'y Nov. 24, 1992) (finding that an EEOC complaint alleging a violation of the ADEA by terminating the complainant's employment for refusing to drive for safety-related reasons was not the same statutory claim because it was not asserted under the STAA).

inference that Complainant's EEOC complaint was for retaliation or implicates the STAA in any way such that the 180-day filing period could be equitably tolled.[13]

Conclusion

Cortez Webb filed his complaint on April 28, 2018. To be timely, some retaliatory act must have occurred on or after October 28, 2017. The only retaliatory act alleged in the OSHA complaint is, again, his termination, which occurred on February 9, 2015.

I further find Complainant has not established a basis for equitable modification of the filing deadline. While the evidence demonstrates Webb filed a discrimination complaint with the EEOC on May 13, 2015 and was intermittently homeless starting in July 2015, these circumstances do not justify invoking equitable principles that would warrant tolling the limitations period in this case.[14] Since I have found no basis for tolling the limitations period, Complainant's claim is untimely, and his complaint alleging a violation of the Surface Transportation Assistance Act's employee protection provisions must be dismissed.[15]

ORDER

Complainant did not file his claim with OSHA within the 180-day filing deadline and he has not established grounds to equitably toll the time period. Accordingly, **IT IS ORDERED** that the complaint is **DISMISSED**.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

[13] The EEOC was under no obligation to notify complainant of the option of filing a complaint with a different agency. *Jones v. First Horizon Nat'l Corp.*, ARB No. 09-005, ALJ No. 2008-SX-060, PDF at 6 (ARB Sept. 20, 2010). Likewise, a Respondent does not have any requirement to notify an employee of the whistleblower provisions of STAA or its filing deadlines. *McCloskey v. Ameriquest Mortgage Co.*, ARB No. 08-123, ALJ No. 2005-SOX-093, PDF at 4 (ARB Aug. 31, 2010).

[14] I note that the exhibits indicate Complainant was diagnosed with bipolar disorder in 2019. While not specifically raising mental impairment as a reason for the untimely filing, I find he has not demonstrated that any mental illness prevented him from timely filing his OSHA complaint. Again, Complainant's testimony suggests that the untimely filing was the result of lack of knowledge of the law, rather than a mental incapacity. Though Complainant appears to be suffering from a bipolar disorder for at least the past three to four years, it did not prevent him from working several jobs, conducting internet research on the legality of being fired from a job because of one's race and eventually filing a discrimination complaint with another federal agency. Complainant has also managed his own affairs, worked and engaged in activities of daily living, despite intermittent periods when he was not residing in a permanent residence.

[15] I did consider that Respondent would not be prejudiced by the late filing. *Clifford v. Conoco Phillips*, ARB No. 2017-0064, ALJ No. 2017-WPC-00002, PDF at 6 (ARB Sept, 6, 2019).

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.

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Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1982.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1982.110(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, 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, Division of Fair Labor Standards. *See* 29 C.F.R. § 1982.110(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. §§ 1982.109(e) and 1982.110(a). 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. §§ 1982.110(a) and (b).