U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 13 November 2020

CASE NO.: 2019-STA-00044

In the Matter of:

MARCIA BUTLER,
Complainant,

v.

COPPER CREEK CARRIERS, INC.,
Respondent.

DECISION AND ORDER

This matter arises under the Surface Transportation Assistance Act, 49 U.S.C. § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 ("STAA" or "the Act"). Complainant Marcia Butler filed a complaint of discrimination against Respondent Copper Creek Carriers, Inc., alleging that she had been terminated for engaging in the protected activity of refusing to drive an unsafe vehicle, and refusing to drive while sick. For the following reasons, I find that Respondent violated the STAA and award both compensatory and punitive damages to Complainant.

Procedural History

Ms. Butler filed a complaint of discrimination under the Act with the Occupational Safety and Health Administration, which found in favor of Respondent by a decision dated May 6, 2019. Complainant filed timely objections and a request for a hearing, and the matter was docketed in the Office of Administrative Law Judges on June 3, 2019. On June 17, 2019, the case was assigned to me. I presided over the formal hearing on January 29, 2020 in Columbia, South Carolina. When the hearing was called to order, Complainant was present, but Respondent did not appear. Complainant and another witness testified, and I admitted Complainant's Exhibits ("CX") 1-5. Ms. Butler was allowed time after the hearing to submit printouts of text messages between her and representatives of Respondent at or about the time she stopped working for Respondent. She did so, and those text messages are admitted as CX 6.

On February 3, 2020, I issued an Order to Show Cause, directing Respondent to show why I should not enter a decision and order without further

proceedings. Respondent did not reply to that order, and on March 12, 2020, I issued an order finding that because it had failed to respond, I would make my decision on the basis of the evidence of record without conducting additional proceedings, as provided in 29 C.F.R. § 18.21(c).

I. Default Judgment

Under the pre-2015 version of the Rules of Practice and Procedure applicable to proceedings before the Office of Administrative Law Judges, 29 C.F.R. Part 18, failure to obey an order of the presiding ALJ could result in a decision being entered against the non-complying party. Former 29 C.F.R. § 18.6(d)(2)(v). The 2015 revision did not include this provision, but 29 C.F.R. § 18.12(b)(10) provides that an administrative law judge can take any appropriate action authorized by the Federal Rules of Civil Procedure. Rule 55 of those rules provides that when a party fails to defend its case, a default must be entered, and the court may, after receiving evidence, render a default judgment.

In this case, Respondent failed to participate in the proceedings. Respondent did not comply with the requirements of the Notice of Assignment dated June 18, 2019; did not comply with the requirements of the Scheduling Order dated September 26, 2019; and most significantly did not appear for the hearing or respond to the Order to Show Cause dated February 3, 2020. At the hearing, I took evidence on the merits and on damages. Under Fed. R. Civ. P. 55 and 29 C.F.R. § 18.12(b)(10), I find it appropriate to enter default judgment against Respondent Copper Creek Carriers, and determine the proper relief below.

II. Alternative: Findings of Fact and Conclusions of Law

Because the availability of default judgment has not been addressed by the Administrative Review Board after the revision of the OALJ rules of practice and procedure, I will make findings of fact and conclusions of law as an alternative basis for this Decision and Order.

Findings of Fact

Complainant, a truck driver for 20 years, started working for Respondent on December 6, 2018. When she was hired, she was told that she would be paid 45 cents for every mile driven, whether or not she was hauling a load. She drove several routes for Respondent between December 6, 2018 and January 16, 2019, logging 13,387 miles. At 45 cents per mile, she earned $6,024.15 in mileage. She also earned three days of breakdown pay at $120.00 per day, three days of layover pay at $120.00 per day, and 10 hours of detention pay at $12 per hour, totaling an additional $720.00. Thus, her entire earnings were $6,964.15, but she was paid only $5,023.20, a shortfall of $1940.95.

On January 15, 2019, Ms. Butler picked up a load in Hanahan, South Carolina and, while she was driving, an engine light came on. Complainant let Respondent's owner and dispatcher know, and tried to have the truck serviced at a

Freightliner facility in Charleston, South Carolina. The Freightliner facility was unable to take the work, and she decided to drive the truck to a Freightliner facility in Columbia, South Carolina. Again, that facility was unable to take the truck, and she drove it to a Petro/TA facility in Columbia, arriving at about 1:00 p.m. When she did, she took the truck out of service. Respondent's owner, Brian Phelps, told Ms. Butler to get the fuel filter changed and the codes removed, and see about finding where some leaking coolant was coming from. At about 6:30 p.m., she again spoke with Respondent's owner and advised that the fuel filter was almost finished. She was instructed to call Ace Choate, Respondent's dispatcher and apparent maintenance supervisor, for a check and to advise on the coolant leak. At about 7:00 p.m., the manager of the repair facility advised that it would be a while before they could check on the coolant leak.

Ms. Butler started feeling ill, and lay down in the truck, where she fell asleep and awoke at about 11:30 p.m. When she awoke, the Petro/TA manager told her that they needed to get a hose from Freightliner because they didn't have any in stock, but before doing so, she needed approval from Respondent. Complainant called and texted Ace many times to obtain his approval, and never got a response. She spoke to the Petro/TA manager about having the codes removed, and was told that Mr. Phelps had advised Petro/TA not to do so because he didn't want to pay for it to be done.

Complainant started feeling worse, and the temperature was below freezing. She packed her personal items and called her son at about 1:00 a.m. on January 16 to pick her up, together with her companion Toby Pilot, and take them home. They arrived home at about 2:30 a.m. Ms. Butler took some cough medicine and went to sleep, waking up with nausea several hours later. When she awoke, she saw that she had missed calls and text messages from Ace, and called him at 1:44 p.m. She then went to the doctor, who gave her a note to stay out of work for two days.

On January 17, 2019, Ms. Butler spoke with Mr. Phelps and told him that she was trying to get well, and that while she was still under a doctor's note she could not drive the truck. He asked her to drive the truck from the Petro/TA station in Columbia to Jellico, Kentucky; the hose had been replaced, but the cracks in the radiator had not been fixed. It would have been unsafe for her to drive the truck without the radiator cracks being repaired. It also would have been unsafe for her to drive the truck in her medical condition, which is why she told Mr. Phelps that under the circumstances, he would have to find someone else to come get the load and deliver it. He accused her of abandoning the load, because she had cleared out the truck. Ms. Butler had not abandoned the load, and told Mr. Phelps as much. She informed him that she was trying to be a responsible driver, and his truck was unsafe. Complainant did not quit her job; however, she never drove for Respondent again after January 17, 2019.

Ms. Butler was advised by Petco/TA not to drive the truck because it had two cracks in the radiator. In her opinion, it would have been unsafe to drive the truck with a cracked radiator, and it would have been unsafe to drive the truck

while she was ill. In her opinion, driving the truck under those conditions would violate Federal Motor Carrier regulations, parts 392 and 393. (CX 6.)

While driving for Respondent, Ms. Butler was paid the following wages, paid on the following dates:

December 14, 2018: $278.15
December 21, 2018: $1,088.55
December 28, 2018: $1,530.00
January 11, 2019: $1,268.25
January 18, 2019: $738.25

Total: $4,903.20

In addition, Copper Creek deposited a payment of $120.00 in Complainant's bank account on January 15, 2019.

On January 25, 2019, Ms. Butler exchanged text messages with "Nikki," who was both Brian's wife and the person in charge of Respondent's payroll. She questioned why she had not received her pay, and Nikki informed her that Respondent thought she had quit. Complainant replied that she had not quit, and Nikki said she would have to take it up with Brian. Nikki said that Respondent would charge Ms. Butler the cost of going to pick up the truck that Complainant had left in the Petco/TA repair facility, and Ms. Butler disputed their right to do that. She objected to Respondent requiring her to drive the truck after refusing to repair it properly, referring to 49 C.F.R. Parts 391, 392, and 393.

After leaving employment with Respondent, Ms. Butler obtained new employment as a truck driver on April 4, 2019, in a job that paid higher wages than she had earned at Copper Creek.

Discussion

A. Respondent Violated the STAA

To prevail in this STAA whistleblower complaint, Ms. Butler must prove by a preponderance of the evidence that she engaged in protected activity, that she suffered an unfavorable personnel action, and that the protected activity was a contributing factor in the unfavorable personnel action. *See* 49 U.S.C. § 31105(b)(1) (adopting the legal burdens of proof at 49 U.S.C. § 42121(b)(2)(B)(i)); 29 C.F.R. § 1978.109(a); *Tablas v. Dunkin Donuts Mid-Atlantic*, ARB No. 11-050, ALJ No. 2010-STA-024, slip op. at 5 (ARB Apr. 25, 2013); *Blackie v. Smith Transp.*, Inc., ARB No. 11-054, ALJ No. 2009-STA-043, slip op. at 8 (ARB Nov. 29, 2012). If she meets this burden of proof, Respondent may avoid liability only if it proves by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of a complainant's protected behavior. 49 U.S.C. § 42121(b)(2)(B)(iii), (iv); *Tablas*, ARB No. 11-050, slip op. at 6; *Blackie*, ARB No. 11-054, slip op. at 8.

1. *Ms. Butler Engaged in Protected Activity*

The Act defines protected activity in pertinent part as –

> (A) filing 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; and
>
> (B) refusing to operate a vehicle because either –
>
> (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).

In this case, Complainant has presented uncontradicted evidence that she filed a complaint with her employer that its direction to drive her truck with mechanical issues violated certain sections of the Federal Motor Carrier regulations. I agree with respect to 49 C.F.R. Parts 392 and 393.

Section 392.3 provides:

> No driver shall operate a commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a commercial motor vehicle, while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle….

Likewise, Section 396.7 provides:

> A motor vehicle shall not be operated in such a condition as to likely cause an accident or a breakdown of the vehicle.

Ms. Butler drove Respondent's truck to a Petco/TA facility in Columbia, SC for necessary repairs. While she was there, she began to feel ill and, due to a delay in completing the repairs, arranged for her own transportation home. When she spoke with Respondent's owner the following day, he asked her to return to the truck and drive it to Jellico, Kentucky. She refused to do so because it was unsafe, both because she was too ill to drive and because the cracks in the truck's radiator had not been repaired. Operating the vehicle while she was as ill as she was likely violated 49 C.F.R. § 392.3. As the vehicle had a cracked radiator and leaking coolant, it was in a condition that was likely to cause an accident or breakdown in

violation of 49 C.F.R. § 396.7. Ms. Butler's communication of her illness and the vehicle's condition constitutes a "complaint" to her employer, as defined in 29 C.F.R. § 1978.102(b)(1), and therefore constitutes protected activity.

In addition, Ms. Butler's refusal to drive the vehicle due to her illness and the truck's condition falls within the definition of protected activity at 29 C.F.R. § 1978.102(c)(1)(i), as it would have been a violation of 49 C.F.R. § 392.3 to drive it in her medical condition, and it would have been a violation of 49 C.F.R. § 396.7 to drive it in its mechanical condition.

Accordingly, I find that Ms. Butler engaged in protected activity when she informed Respondent of her illness and of the truck's unsafe condition, and engaged in protected activity when she refused to drive the truck from Columbia, SC to Jellico, KY for the same reasons.

2. *Ms. Butler Suffered an Adverse Employment Action*

Although there is no evidence in the record showing that Respondent or any of its officers or managers decided to terminate Ms. Butler, and communicated that decision to her, I find that under the circumstances of this case, she was discharged from employment. First, Brian Phelps told Complainant of abandoning her load, when she had not. Second, both Brian and Nicki Phelps told Complainant that they thought she had quit her job. She had not quit her job, and told them so. However, Respondent never assigned her another load. Third, Respondent never paid her the wages she had earned during the last week of her employment. Fourth, Respondent informed her that they were charging her for its cost in recovering the truck she had left at Petro/TA. In a case similar to this one, the Administrative Review Board held that when an employer communicated to an employee that the employer thought he had quit, but the employee had not, the mere communication of the belief that the employee was quit was an adverse action. *Klosterman v. E.J. Davies, Inc.*, ARB No. 12-035, ALJ No. 2007-STA-019, slip op. at p. 8 (ARB Dec. 18, 2012, *reissued* Jan. 9, 2013). And even beyond that, the communication constituted a termination of employment. *Id.*, slip op. at p. 9. In *Klosterman*, as in this case, the employee told the employer that he had not quit, but had simply refused to drive an unsafe vehicle. In the present case, Ms. Butler likewise told Mr. Phelps that she had not quit, but had refused to drive an unsafe vehicle, one with a cracked radiator. As the ARB has explained, "an employer who decides to interpret an employee's actions as a quit or resignation has in fact decided to discharge that employee." *Minne v. Star Air, Inc.*, ARB No. 05-005, ALJ No. 2004-STA-026, slip op. at p. 14 (ARB Oct. 31, 2007). *See also Ass't Sec'y & Vilanj v. Lee & Eastes Tank Lines, Inc.*, 1995-STA-036; *Ass't Sec'y & Lajoie v. Envtl. Mgmt. Sys., Inc.*, 1990-STA-031 (Sec'y Oct. 27, 1992).

In accordance with established STAA authority, I find that Complainant suffered an adverse employment action when Mr. Phelps accused her of abandoning her load, and when he informed her that he considered her to have quit her job.

3. *Ms. Butler's Protected Activity Contributed to the Adverse Action*

The circumstances of this case make it clear that Complainant's protected activity of refusing to drive her vehicle and making a complaint to her employer contributed to the adverse employment actions. Ms. Butler drove a defective vehicle – one that was leaking coolant – to three different repair shops; at the last, where the repair facility actually looked at the truck, the truck was determined to have two cracks in the radiator. Complainant was instructed by her employer to have the hose replaced and the codes removed, and to drive the truck to its destination. While waiting for repairs, Ms. Butler became increasingly ill, and fell asleep. When she awoke, she was advised that Respondent had not authorized or paid for the repairs that had been performed. After repeated attempts to contact Mr. Choate, Ms. Butler called her son and asked him to drive her and Mr. Pilot home, because she was too ill to drive. After taking medication, she slept for most of the next day, and first spoke with her employer in the afternoon. She was asked to return to the repair facility and bring the truck back, and she declined because of her illness and the unsafe condition of the truck. Apparently when another employee of Respondent went to retrieve the truck, Complainant's personal effects were no longer in it. At that point, Respondent decided that Ms. Butler had quit, although she had not. And when she next spoke with Mr. Phelps and Nicki Phelps, they told Complainant that they thought she had quit. Respondent never assigned another load to Complainant in spite of her insistence that she had not quit.

It is difficult to imagine circumstances showing that a driver's protected activity contributed to the adverse action taken against her. Ms. Butler communicated to Respondent that she could not drive the truck, both because she was ill and because the truck was in an unsafe condition and, within a period of only a few days, she was terminated. There were no intervening circumstances on which a termination could be based. She was terminated based on Respondent's real or manufactured belief that it thought she had quit.

I find and conclude, therefore, that Ms. Butler's protected activities contributed to the adverse actions taken by Respondent.

4. *Respondent Has Not Met Its Burden in Opposition to the Complaint*

As I have found that Ms. Butler has proven all the elements of her complaint, the burden shifts to Respondent to show by clear and convincing evidence that it would have taken the same actions against her in the absence of protected activity. As Respondent did not participate in these proceedings, it has failed to do so.

5. *Conclusion*

For the foregoing reasons, I find that Respondent Copper Creek Carriers, Inc. violated the STAA, and Complainant is entitled to appropriate relief.

III. Remedies

Under the Act, Ms. Butler is entitled to remedies for Respondent's violation, including, as appropriate, affirmative action to abate the violation, reinstatement to her former position, compensatory damages with interest, and punitive damages. 49 U.S.C. § 31105(b)(3)(A); 29 C.F.R. § 1978.105(a)(1). Each will be discussed below.

1. *Affirmative Action to Abate Violation*

Ms. Butler has not identified any actions that may serve to abate Respondent's violation of the Act. Typically, such actions would include requiring Respondent to post a copy of this Decision and Order in a conspicuous location available to all its employees. Given the small size of Respondent's operations, I do not believe requiring it to do so in this case is warranted.

2. *Reinstatement*

Reinstatement is an available remedy "where [it is] appropriate." 29 C.F.R. § 1978.105(b)(3)(a). I find in this case that reinstatement is not appropriate. First, it is clear to me that the employment relationship is irreparably damaged due to the hostility between the parties. *See Dutile v. Tighe Trucking, Inc.* 1993-STA-031 (Sec'y Oct. 31, 1994). Ms. Butler testified credibly that she lost trust in Respondent based on the actions of its owner and employees in this matter, particularly in their failure to pay her for the work she had performed. Additionally, Ms. Butler has secured new employment in a driving position that pays her more than she was earning while working for Respondent.

3. *Damages*

a. Compensatory Damages

Compensatory damages may consist of both economic and non-economic damages. I find that Complainant is entitled to both.

Ms. Butler suffered economic damages both by Respondent's failure to pay her what she earned, and by the termination of her employment. The uncontradicted evidence shows that Respondent failed to pay Complainant $1,940.95 in wages that she earned prior to her termination. In addition, Complainant earned no wages after January 18, 2019. She obtained new, higher-paying employment on April 4, 2000, which was 11 weeks later. But because the evidence shows that she was unable to work after her termination until January 25, 2019, she is entitled to 10 weeks of back pay. To calculate that amount of back

pay, I will average the wages she earned for the full weeks of employment she worked for Respondent, based on the uncontradicted evidence. The paycheck received on December 14, 2018, was for a partial week, as was the paycheck received on January 18, 2019. The other three paychecks averaged $1,295.60 per week. Multiplying that amount by the 10 weeks she was out of work, Complainant is entitled to $12,956.00. Her total economic damages are $14,896.95 plus interest as prescribed in the Act.

Based on the evidence of record, I find that Ms. Butler is entitled to non-economic damages. She testified credibly that Respondent's termination and non-payment of wages made her angry and emotionally upset, conditions that lasted until she found new employment in April. Likewise, Mr. Pilot testified that Respondent's treatment of Ms. Butler "messed with her a lot worse than she probably will admit," and that she was angry from about January 25, 2019 up until she found new employment. Tr. p. 35. Based on that uncontradicted testimony, I find that Ms. Butler suffered emotional distress and is entitled to non-economic compensatory damages in the amount of $5,000.00.

b. Punitive Damages

The ARB has explained that punitive damages are available when there has been "reckless or callous disregard for the plaintiff's rights, as well as intentional violations of federal law." *Fink v. R&L Transfer, Inc.*, ARB No. 13-018, ALJ No. 2012-STA-006, slip op. at p. 5 (ARB Mar. 19, 2014). I find that punitive damages are warranted in this case. Respondent demonstrated a callous disregard for Ms. Butler's rights by (1) asking her to have the fuel filter replaced and the codes deleted so that she could continue to drive her truck, rather than effect repairs evidenced by the coolant leak; (2) asking her to return to the truck and drive it to Kentucky in spite of her insistence that she was ill and that the truck was unsafe to drive; and (3) withholding her pay to compensate Respondent for the cost of retrieving the unsafe truck. The first two of those factors also demonstrate that Respondent intentionally asked Ms. Butler to violate federal law as set forth in the Federal Motor Carrier regulations cited above.

The proper amount of punitive damages is discretionary, and in this case is difficult to determine due to Respondent's failure to participate in the proceedings. I give credit to Complainant's testimony that Respondent is a small operator, which caused her to overlook Respondent's failure to pay her for work performed over the 2018 Christmas holidays. Accordingly, I find that $5,000.00 is a sufficient amount to deter further violations by Respondent.

ORDER

Based on the foregoing, IT IS ORDERED:

1. Marcia Butler has met her burden to show that Copper Creek Carriers, Inc. violated the STAA when it took adverse employment actions against her;

2. Copper Creek Carriers shall pay Complainant the amount of $1,940.95 for the unpaid wages at the time of Ms. Butler's termination, plus interest at the rate applicable to underpayment of taxes under 26 U.S.C. § 6621, compounded daily from January 26, 2019 to the present and continuing until paid;
3. Copper Creek Carriers shall additionally pay Complainant the amount of $12,956.00 plus interest at the rate applicable to underpayment of taxes under 26 U.S.C. § 6621, compounded daily based on the amounts and beginning on the dates set forth in the below table, through the present and continuing until paid:

Week Ending Date	**Amount**	**Start Date of Interest Accrual, Compounded Daily**
February 2, 2019	$1,295.60	February 2, 2019
February 9, 2019	$1,295.60	February 9, 2019
February 16, 2019	$1,295.60	February 16, 2019
February 23, 2019	$1,295.60	February 23, 2019
March 2, 2019	$1,295.60	March 2, 2019
March 9, 2019	$1,295.60	March 9, 2019
March 16, 2019	$1,295.60	March 16, 2019
March 23, 2019	$1,295.60	March 23, 2019
March 30, 2019	$1,295.60	March 30, 2019
April 4, 2019	$1,295.60	April 4, 2019

4. Respondent shall additionally pay Complainant non-economic damages in the amount of $5,000.00;
5. Respondent shall additionally pay Complainant punitive damages in the amount of $5,000.00.

SO ORDERED.

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

PCJ/ksw
Newport News, Virginia

NOTICE OF APPEAL RIGHTS: If you are dissatisfied with this decision and wish to appeal, you must file a Petition for Review ("Petition") with the Administrative

Review Board ("Board") within fourteen (14) days of the date of the administrative law judge's decision.

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. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, the Associate Solicitor, Division of Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

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).

IMPORTANT NOTICE ABOUT FILING APPEALS:

The Notice of Appeal Rights has changed because the system for electronic filing is changing beginning on Monday, December 7, 2020, at 8:30 a.m.

Thus, if you intend to e-file your appeal online on or after December 7, 2020, at 8:30 a.m., be sure to allow sufficient time to register under the new system and to learn how to file an appeal.

You may pre-register to use the new system from November 9, 2020, until 5:00 pm EST on December 3, 2020. As part of the migration to EFS, the Board's current EFSR system will go offline permanently at 5:00 pm Eastern Standard Time (EST) on December 3, 2020. This means that you will not be able to e-file any appeals or other documents with the ARB after 5:00 pm EST on December 3rd through December 7th, at 8:30 a.m. If you intend to file on these dates, please plan to file by other means (conventional mail, hand delivery, etc.).

Although you may pre-register earlier, you will not be able to file using the new system until December 7, 2020, at 8:30 a.m.

In addition, the Office of the Chief Information Officer ("OCIO") will conduct an informational webinar on how to register and how to conduct basic filing operations:

Tuesday, November 17, 1:00 to 2:00 p.m. EST.

Webinar link:

https://usdolevents.webex.com/usdolevents/onstage/g.php?MTID=e7dbc7a29dbb7f5ec26f4a717032cfb02

US Toll Free 1-877-465-7975

US Toll 1-210-795-0506

Access code: 199 118 1372

Password for all meetings: Welcome!68

Information for webinars on the new system will also be available on the OALJ (www.dol.gov/agencies/oalj), the ARB (www.dol.gov/agencies/arb), and the new EFS (https://efile.dol.gov/) websites.

Filing Your Appeal Online

If you e-file your appeal on or before 5 p.m. on December 3, 2020, you must use the Board's current Electronic File and Service Request (EFSR) system at dol-appeals.entellitrak.com. Again, the Board's current EFSR system will go offline at 5 p.m. Eastern Time on December 3, 2020, for deployment related activities. Please plan your filings accordingly. Information regarding registration for access to the EFSR system, a step by step user guide, and answers to FAQs are found at that website link. If you have any questions or comments, please contact Boards-EFSR-Help@dol.gov

Beginning on Monday, December 7, 2020, at 8:30 a.m., the U.S. Department of Labor will implement a new eFile/eServe system ("EFS") at https://efile.dol.gov/. If you use the current website link, dol-appeals.entellitrak.com, you will be directed to the new system. Information regarding registration for access to the new EFS, as well as user guides, video tutorials, and answers to FAQs are found at https://efile.dol.gov/support/.

Registration with EFS is a two-step process. First, all users, including those who are registered users of the current EFSR system, will need to create an account at login.gov (if they do not have one already). Second, users who have not previously registered with the EFSR system will then have to create a profile with EFS using their login.gov username and password. Existing EFSR system users will not have to create a new EFS profile. All users can learn how to file an appeal to the Board using EFS by consulting the written guide at https://efile.dol.gov/system/files/2020-11/file-new-appeal-brb.pdf and the video tutorial at https://efile.dol.gov/support/boards/new-appeal-brb.

BE SURE TO REGISTER IN ADVANCE! Again, you may preregister for EFS from November 9, 2020, until 5:00 pm EST on December 3, 2020. Establishing an EFS account under the new system should take less than an hour, but you will need additional time to review the user guides and training materials. If you experience difficulty establishing your account, you can find contact information for login.gov and EFS at https://efile.dol.gov/contact.

If you file your appeal online, no paper copies need be filed. **You are still responsible for serving the notice of appeal on the other parties to the case.**

Filing Your Appeal by Mail

You may, in the alternative, including the period when EFSR and EFS are not available, file your appeal using regular mail to this address:

U.S. Department of Labor
Administrative Review Board
ATTN: Office of the Clerk of the Appellate Boards (OCAB)
200 Constitution Ave. NW
Washington, DC 20210–0001

Access to EFS for Non-Appealing Parties

If you are a party other than the party that is appealing, you may request access to the appeal by obtaining a login.gov account and creating an EFS profile. Written directions and a video tutorial on how to request access to an appeal are located at:
https://efile.dol.gov/support/boards/request-access-an-appeal

After An Appeal Is Filed

After an appeal is filed, all inquiries and correspondence should be directed to the Board.

Service by the Board

Registered users of EFS will be e-served with Board-issued documents via EFS; they will not be served by regular mail. If you file your appeal by regular mail, you will be served with Board-issued documents by regular mail; however, on or after December 7, 2020, at 8:30 a.m., you may opt into e-service by establishing an EFS account, even if you initially filed your appeal by regular mail.