UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

Cherry Hill, NJ

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Issue Date: 25 September 2023

Case No.: 2021-STA-00041

In the Matter of:

RHONDA MILLER,
o/b/o EUGENE MITCHELL
Complainant

v.

RHINO, INC.,
Respondent

DECISION AND ORDER ON DAMAGES

The above-captioned matter comes before the Office of Administrative Law Judges ("OALJ") under the employee protection provision of the Surface Transportation Assistance Act ("STAA" or "the Act"), which was enacted in 1982 and codified at 49 U.S.C. app. § 2305. In 1994, the STAA was recodified at 49 U.S.C. § 31105. The STAA was amended by the Implementing Recommendations of the 9/11 Commission Act 2007, P.L. No. 110-053 (Aug. 3, 2007). The OALJ's procedural rules for administrative hearings found at 29 C.F.R. Part 18, Subpart A, also apply.

I) Procedural History

On February 22, 2021, Eugene Mitchell ("Complainant") filed a retaliation complaint against Respondent Rhino, Inc. ("Respondent"), alleging that the termination of his employment as a commercial truck driver on August 24, 2020, violated the employee protection provisions of the STAA. In a letter dated March 10, 2021, from the Occupational Health and Safety Administration ("OSHA"), Complainant was advised that OSHA investigated the allegations and issued findings and an order dismissing the complaint because there was no cause to believe Respondent violated the STAA. Objecting to OSHA's dismissal, Complainant filed a request for a formal hearing before OALJ.

After months of delay and repeated failure to provide Complainant with their initial disclosures or to engage in any discovery as I directed, I issued an Order rendering a default decision against Respondent on November 18, 2021. On January 28, 2022, Respondent filed a pleading requesting that the default decision be reconsidered or set aside. I denied Respondent's reconsideration request on May 10, 2022. As stated in the

Order rendering a default decision against Respondent, (1) a default decision has been entered against Respondent in this matter as a sanction for its non-compliance with multiple orders issued and (2) Complainant has established, through Respondent's default, that his rights under the STAA have been violated.

In an Order issued on May 11, 2022, I provided the parties deadlines for submissions on the issue of relief and damages. Specifically, the May 11, 2022 Order directed Complainant to file proof of damages within 30 days and Respondent to submit its response to such a filing within 30 days of receipt. I granted two unopposed motions Complainant, through counsel, filed to request extensions of the deadlines ordered for submissions of the issue of relief and damages. Those two motions advised that Complainant underwent multiple amputations of his lower extremities during a hospitalization in May 2022 which rendered Claimant's "unable to finalize his proof of damages" within the previously directed deadlines. The last-granted extension gave Complainant until September 8, 2022, to file his damages proof.

On September 1, 2022, Complainant's counsel submitted another unopposed motion seeking extension of the deadline set for filing of those submissions. The September 1, 2022, motion stated that Complainant had been re-admitted to the hospital on August 2, 2022, and unfortunately, passed away on August 30, 2022.

Per my Order issued on September 8, 2022, a stay was issued on all previously directed deadlines until further notice to allow for filing of a motion for substitution of a party to act on behalf of Complainant. On November 28, 2022, my office timely received a pleading from Complainant's counsel entitled "Suggestion of Death and Motion for Substitution" ("Motion for Substitution") providing notice of the death of Complainant, Eugene Mitchell, and requesting that Rhonda Miller, identified therein as Complainant's "common law spouse," be substituted in place of the deceased Complainant. Respondent submitted no response to Complainant's Motion for Substitution. I granted Complainant's unopposed Motion for Substitution in an Order issued on January 19, 2023, and directed the parties to submit proof on the issue of damages. Complainant filed proof of damages on March 6, 2023 ("Complainant's Proof"). Respondent did not respond to my January 19 Order and has not submitted any proof on the matter of damages to-date.

II) Complainant's Evidence in Support of Relief and Damages

In support of their request for damages, Complainant submitted a sworn declaration from Rhonda Miller. ("Miller Decl.") Appended to this declaration was further evidence, including: a copy of Complainant's March 15, 2021 statement to Department of Labor regarding the accident that led to his retaliatory firing (EX A); a copy of Complainant and Rhonda Miller's November 21, 2021 joint grievance against Piedmont Henry Hospital, memorializing part of the timeline of Complainant's struggles to recover from the accident (EX B); copies of dispossessory court documents from Complainant and Rhonda Miller's

multiple eviction actions (EX C); and copies of Complainant and Rhonda Miller's W-2 tax forms from 2018 to 2020 (EX D).[1]

III) Undisputed Facts: Summary of Rhonda Miller's Sworn Declaration

According to the unrebutted declaration of Rhonda Miller, both she and Complainant were Class A Commercial Drivers for Respondent from approximately February 2018 through August 24, 2020. (Miller Decl. at 1). Complainant was terminated from his employment and given a three-year bar after an accident involving his truck. (Miller Decl. at 1-2). After Complainant's termination, he and Miller could not afford basic necessities like food and rent; additionally, Complainant was "unable to continue pursuing treatment options [for injuries sustained from the accident] based on an inability to pay insurance costs and medical costs." (Miller Decl. at 2-3). This inability to receive care caused Complainant to suffer from numerous symptoms, including swollen legs and feet, open and weeping sores on his legs, and blisters. *Id.* According to Miller, Complainant also suffered intense depression, insomnia, and stress as a result of their financial struggles and his medical issues. *Id.*

Complainant and Miller were evicted from their apartment in June 2021 after owing $12,000.00 in past-due rent. (Miller Decl. at 4). During the eviction process, Complainant and Miller moved approximately $18,000.00 to $20,000.00 worth of personal belongings into a storage unit. *Id.* These items included furniture, appliances, and personal items such as "family photo albums, keepsakes, music composed by [Complainant] and [Miller], and other childhood memorabilia." (Miller Decl. at 4).

Complainant and Miller began living out of their personal vehicle in June 2021. *Id.* During this time, Complainant's injuries worsened, and he could not care for himself. In April 2022, Complainant's storage unit was repossessed and "all of [their] earthly belongings" were auctioned off, which caused Complainant "immense emotional turmoil…as [they] lost every single thing [they] owned…" *Id.*

Over the winter of 2021 and into April and May 2022, Complainant's condition continued to decline, and he was unable to obtain comparable work. (Miller Decl. at 5). Complainant underwent a double amputation of his lower extremities on May 12, 2022; following a two-week stay in a rehab facility, Complainant returned to living in his vehicle. *Id.* Complainant remained homeless, living without access to running water or a restroom, until he passed away on August 30, 2022.

As of the date of the sworn declaration, Miller remains homeless and lives in her vehicle. *Id.* In her declaration, she averred that Complainant earned an average of $1,395.99 per week, basing this declaration on their respective W-2's from 2018, 2019, and 2020. (Miller Decl. at 6; EX D).

[1] In addition to Rhonda Miller's sworn declaration, Complainant's offer also includes a back pay computation summary report supporting their requested amounts of back pay and interest.

IV) Complainant's Request for Damages

Complainant requests $154,540.60 in back pay and pre-judgement interest, covering a time period spanning 106 weeks, from the date of his termination through the date of his death. In support of the claim for back pay damages, Complainant provided tax records and personal financial statements demonstrating the net financial loss Complainant suffered post-termination. Complainant also requests $150,000.00 in compensatory damages for emotional distress. According to the sworn declaration of Rhonda Miller, Complainant suffered extreme stress and mental anguish as a result of the medical and financial hardship he experienced after his termination.[2]

V) Legal Standards and Findings

A) Back Pay

Generally, a wrongfully terminated employee is entitled to back pay under the Act. 49 U.S.C. § 31105(b)(3)(A)(iii). This provision is designed to "return the wronged employee to the position he would have been in had his employer not retaliated against him." *Smith v. Lake City Enter., Inc.,* ARB No. 09-033, 09-091, ALJ No. 2006-STA-0032, 2010 WL 3910346, at 8 (Sept. 24, 2010). Back pay damages are not calculated according to a "fixed method," but still must be "reasonable and supported by the record." *Assistant Sec'y & Bryant v. Mendenhall Acquisition Corp.,* ARB No. 04-014, ALJ No. 2003-STAA-036, 2005 WL 1542547 at 6 (June 30, 2005).

The period for calculating entitlement to back pay ends with a bona fide offer of reinstatement from the employer. *Id.* The ARB has also held that the period for which a wrongfully terminated employee is entitled to back pay damages ends when the complainant finds new, higher-paying employment. *Simpson v. Equity Transp. Co.,* AARB No. 2019-0010 (May 13, 2020). This limitation reflects the make-whole purpose of the availability of this form of relief—to return the wronged employee to the same position, not to improve his condition. *See, e.g., Smith v. Lake City Enter., Inc.,* at 10 ("rejecting complainant's back pay request where it would put the employee "in a better position than he was when employed").

Generally, periods of unavailability due to disability are excluded from computations of back pay, and complainants cannot recoup damages for the period of time that they would have been unable to work due to their injuries. *Sennello v. Reserve Life Ins. Co.,* 667 F. Supp. 1498, 1520 (1987); *see also Sowers v. Kemira,* 701 F. Supp. 809, 826 (S.D. Ga. 1988). However, a wrongfully discharged employee will not be held accountable for periods of unavailability for work that are due to the illegal actions of the employer. *Sure-Tan, Inc. v. NLRB,* 467 U.S. 883, 910 (1984); *see also Graves Trucking, Inc. v. NLRB,* 692 F.2d 470, 475 (7th Cir. 1982). Here, it is clear from the unrebutted evidence that Complainant's disability and subsequent unavailability for work arose out of his inability to

[2] Complainant also requests $50,000.00 in punitive damages for Respondent's "reckless and callous disregard for Complainant's rights under the STAA." For reasons set forth below, I find that Complainant is not entitled to punitive damages.

afford adequate medical care arising from his retaliatory termination. Because Complainant's termination created the financial instability and loss of income that prevented him from affording adequate care, I find that Respondent's violation of the Act is responsible for Complainant's unavailability in the period after his termination. Consequently, Complainant's entitlement to backpay includes the full 106-week period between his discharge on August 24, 2020 and his death on August 30, 2022.

Here, Rhonda Miller—who worked with Complainant for Respondent, in the same position—stated that Complainant earned an average of $1,395.99. (Miller Decl. at 6). In support of this contention, Complainant offered copies of his 2018, 2019 and 2020 W-2s from Respondent. (Miller Decl., EX D). The facts also demonstrate that, prior to Complainant's death, he never received a bona fide offer of reinstatement, nor did he find new, higher-paying employment. Thus, the evidence of record supports finding that Complainant is entitled to backpay at a rate of $1,395.99 per week for the full 106-week time period, for a total of $147, 974.94.

In addition to back pay awards, a successful STAA complainant is entitled to pre-judgment interest on the back pay awards "from the date of discharge to the date of reassignment," which is to be compounded quarterly. *Johnson v. Roadway Express, Inc.,* ARB No. 99-011, ALJ No. 1999-STA-5 (ARB Mar. 29, 2000). The ARB has held that the administrative law judge must calculate interest on that award according to the rate charged for underpayment of federal taxes. *Dale v. Step 1 Stairworks, Inc.,* ARB No. 04-003, 2002-STA-30, at 16 (ARB Mar. 31, 2005). This rate is set forth in 26 U.S.C. § 6621(a)(2) as "the Federal short-term rate determined under subsection (b)" plus "3 percentage points." Thus, Complainant is entitled to $5,565.55 in interest on the adjusted gross back pay. Overall, I find that Complainant is entitled to back pay in the total amount of **$153,540.60**.

B) Mitigation of Damages

A successful STAA complainant must "mitigate his damages through the exercise of reasonable diligence in seeking alternative employment." *Cook v. Guardian Lubricants, Inc.*, ARB Case No. 97-055, ALJ Case No. 95-STA-43, at 5 (May 30, 1997). This duty generally requires not only that the wrongfully terminated employee "diligently seek substantially equivalent employment . . . but also that the employee act reasonably to maintain such employment" *Id.* (citing *Hufstetler v. Roadway Express, Inc.*, 85-STA-8 (Sec'y Aug. 21, 1986)). However, the employer has the burden to prove by a preponderance of evidence that the employee failed to mitigate his damages. *Abdur-Rahman v. DeKalb County*, ARB Nos. 12-064, -067, ALJ Nos. 2006-WPC-2, -3 (ARB Oct. 9, 2014) (citing *Johnson*, ARB No. 99-011, ALJ No. 1999-STA-5 (ARB Mar. 29, 2000).

Here, Respondent has submitted no evidence that Complainant failed to mitigate his damages prior to his death. Thus, Respondent has failed to carry its burden, and I find that Complainant has properly mitigated his damages through the exercise of reasonable diligence in seeking alternative employment.

C) Punitive Damages

In addition to front and back pay, the STAA also provides for the possibility of punitive damages as a form of relief, in an amount not to exceed $250,000, where "there has been 'reckless or callous disregard for the plaintiff's rights, as well as intentional violations of federal law.'" *Youngerman v. United Parcel Serv., Inc.*, ARB No. 11-056, ALJ No. 2010-STA047, slip op. at 5 & n.16 (ARB Feb. 27, 2013) (citing *Ferguson v. New Prime, Inc.*, ARB No. 10-075, ALJ No. 2009-STA-047 (ARB Aug. 31, 2011). However, the ARB has held that entitlement to punitive damages abates upon the death of the complainant. *Estate of Daniel A. Ayres v. Weatherford, U.S., L.P.,* ARB Nos. 2018-0006, -0074; ALJ No. 2015-STA-00022 (Nov. 18, 2020). *See also Weatherford U.S., L.P., v. U.S. Dep't of Labor,* 2023 U.S. App. LEXIS 12798 (6th Cir. 2023) (finding that the inherently penal nature of punitive damages under the Act means that, pursuant to federal common law, those damages do not survive a party's death).

As stated *supra,* Complainant passed away on August 30, 2022. Consequently, Complainant is not entitled to punitive damages.

D) Compensatory Damages

A successful whistleblower complainant may recover for compensatory damages if they can establish "by a preponderance of the evidence that the unfavorable personnel action caused the harm." *Evans v. Miami Valley Hosp.*, ARB Nos. 2007-0118, -0121; ALJ No. 2006-AIR-00022, at 20 (ARB June 30, 2009).

Here, the unrebutted statement of Rhonda Miller demonstrates that Respondent's violation of the STAA caused Complainant's harm. Specifically, Complainant's retaliatory firing left him unable to earn money, and this financial disruption served as the basis for the myriad other severe harms Complainant suffered, including his eventual death. Without gainful employment, Complainant was unable to afford rent, medical treatment, or rehabilitative services; in her declaration, Rhonda Miller testified that Complainant "had avoided going to the hospital previously due to lack of insurance and income, preventing [him] from seeking medical care." (Miller Decl. at 5.).

Complainant also suffered mental anguish as a result of his inability to earn money, as nonpayment of rent on a storage unit resulted in all of Complainant's belongings being auctioned off. According to Rhonda Miller, this caused Complainant "immense emotional turmoil…as we lost every single thing we owned including irreplaceable family photos and childhood memorabilia." (Miller Decl. at 4). In short, all of the harm Complainant experienced stemmed from his lack of income, a condition that directly resulted from Respondent's decision to fire him in violation of the STAA. Complainant's inability to pay for medical care, rent, and rehabilitative services ultimately caused him both physical harm and mental anguish -- but for Respondent's violative conduct, Complainant would not have experienced the financial instability that led to the various harms he suffered.

Complainant seeks $150,000.00 in compensatory damages, and I find this amount reasonable given both precedent and the gravity of the harms Complainant suffered. *See Fink v. R&L Transfer, Inc.,* ARB Case No. 13-018 (ARB Mar. 19, 2014) (finding that Complainant was entitled to $100,000.00 in damages based on their testimony regarding an inability to afford basic living expenses, loss of home, and mental anguish); *see also Maverick Transportation, LLC v. U.S. Dep't of Labor,* ARB Case No. 12-3004 (8th Cir. Jan. 16, 2014, corrected Jan. 17, 2014) (2014 WL 148713). Therefore, I find that Complainant is entitled to a total of **$150,000.00** in compensatory damages.

VI) Attorney Fees and Costs

Complainant is entitled to reasonable costs, expenses and attorney fees incurred in connection with the prosecution of the instant complaint. 49 U.S.C.A. § 31105(a)(3)(B). Here, Complainant's counsel seeks $19,400.00 in attorney's fees.[3] In support of their request, Complainant's counsel included corresponding billing records indicating that three "similarly qualified Associate Attorneys" spent 38.8 hours to litigate this case, at a rate of $500.00 per hour. (Complainant's Proof at 6; EX 4). In support of their contention that $500.00 per hour constituted a reasonable hourly rate, Complainant's counsel attached a sworn declaration from Rachel Canfield ("Canfield Decl."), counsel of record and one of the three attorneys who worked on the matter.

The starting point in any determination for an objective estimate of the value of a lawyer's services is to multiply the hours expended by a "reasonable hourly rate". *Hensley v. Eckerhart,* 461 U.S. 424, 433, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983). A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation. *Blum v. Stenson,* 465 U.S. at 895-96 n. 11, 104 S. Ct. at 1547 n. 11; *see also Gaines v. Dougherty County Board of Education,* 775 F.2d 1565, 1571 (11th Cir. 1985). The applicant bears the burden of producing satisfactory evidence that the requested rate is in line with prevailing market rates. *NAACP v. City of Evergreen,* 812 F.2d 1332, 1334 (11th Cir. 1987).

As Complainant's counsel rightly pointed out in their request for fees, affidavits from experts in the applicable field of law may be considered "satisfactory evidence" of the reasonable hourly rate. (Complainant's Proof at 8). However, the Eleventh Circuit has held that "satisfactory evidence" must be—at minimum—**more** than an affidavit of the attorney who performed the work for which fees are requested. *Norman v. Housing Auth. of City of Montgomery,* 836 F. 2d 1292 (11th Cir. 1988) *; see also Blum v. Stenson,* 465 U.S. at 895-96 n.11, 104 S. Ct. at 1547 n. 11. *Accord, Gaines v. Dougherty County Board of Education,* 775 F.2d 1565, 1571 (11th Cir. 1985).

[3] Complainant's counsel included a request for attorney's fees as part of their offer of proof on damages.

As stated *supra*, the only evidence to support counsel's contention that the requested hourly rate is reasonable is the sword declaration of Rachel Canfield, an attorney who—by Complainant's own admission—worked 24.7 hours on the case. Consequently, Complainant's counsel has not carried their burden to show "satisfactory evidence" of the reasonable hourly rate.

Complainant may submit a Fee Petition within 30 days of this decision detailing the aggregate amount of all costs and expenses that were reasonably incurred by Complainant in this case. Supportive documentation—including "satisfactory evidence" of the reasonable hourly rate—must be attached. Thereafter, Respondent shall have 15 days within which to challenge the payment of costs and expenses sought by Complainant response.

VII) Conclusion

Complainant is entitled to an award of accrued back pay for the period of his unemployment spanning approximately 106 weeks, from his termination on August 24, 2020 to his death on August 30, 2022. I also find that he is entitled to both pre- and post-judgement interest on his back pay award, which is to be compounded quarterly until Respondent satisfies the award.

In addition, I find that Complainant is entitled to compensatory damages for emotional distress caused by Respondent's conduct. For reasons discussed above, however, I find that punitive damages are not warranted in this case.

VIII) ORDER

Based on the foregoing, **IT IS HEREBY ORDERED** that:

1. Respondent will pay to Complainant back pay in the amount of **$147,974.94**, covering the period from August 24, 2020 to August 30, 2022.

2. Respondent will pay to Complainant pre-judgement interest in the amount of **$5,565.66** on the back pay award, pursuant to 26 U.S.C. § 6621(a)(2).

3. Respondent will pay to Complainant post-judgement interest on his back pay award, pursuant to 26 U.S.C. § 6621(a)(2). This interest shall compound quarterly until Respondent satisfies the back pay award.

4. Respondent will pay to Complainant **$150,000.00** in compensatory damages for emotional distress.

5. Complainant's claim for punitive damages be denied.

6. Counsel for Complainant will have **30 days from the date of this Decision and Order** to file a fully supported application for fees, costs, and expenses.

Respondent will have **15 days from the receipt of such application** to file any objections to the fee request.

SO ORDERED.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey

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 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).

FILING AND SERVICE OF AN APPEAL

1. Use of EFS System: The Board's Electronic Filing and Service (EFS) system allows parties to initiate appeals electronically, file briefs and motions electronically, receive electronic service of Board issuances and documents filed by other parties, and check the status of appeals via an Internet-accessible interface. Use of the EFS system is free of charge to all users. To file an appeal using the EFS System go to https://efile.dol.gov. All filers are required to comply with the Board's rules of practice and procedure found in 29 C.F.R. Part 26, which can be accessed at https://www.ecfr.gov/current/title-29/subtitle-A/part-26.

A. Attorneys and Lay Representatives: Use of the EFS system is **mandatory for all attorneys and lay representatives** for all filings and all service related to cases filed with the Board, absent an exemption granted in advance for good cause shown. 29 C.F.R. § 26.3(a)(1), (2).

B. Self-Represented Parties: Use of the EFS system is strongly encouraged for all self-represented parties with respect to all filings with the Board and service upon all other parties. Using the EFS system provides the benefit of built-in service on all other

parties to the case. Without the use of EFS, a party is required to not only file its documents with the Board but also to serve copies of all filings on every other party. Using the EFS system saves litigants the time and expense of the required service step in the process, as the system completes all required service automatically. Upon a party's proper use of the EFS system, no duplicate paper or fax filings are required.

Self-represented parties who choose not to use the EFS system must file by mail or by personal or commercial delivery all pleadings, including briefs, appendices, motions, and other supporting documentation, directed to:

Administrative Review Board
Clerk of the Appellate Boards
U.S. Department of Labor
200 Constitution Avenue, N.W., Room S-5220
Washington, D.C., 20210

2. EFS Registration and Duty to Designate E-mail Address for Service

To use the Board's EFS system, a party must have a validated user account. To create a validated EFS user account, a party must register and designate a valid e-mail address by going to https://efile.dol.gov, select the button to "Create Account," and proceed through the registration process. If the party already has an account, they may simply use the option to "Sign In."

Once a valid EFS account and profile has been created, the party may file a petition for review through the EFS system by selecting "eFile & eService with the Administrative Review Board" from the main dashboard, and selecting the button "File a New Appeal - ARB." In order for any other party (other than the EFS user who filed the appeal) to access the appeal, the party must submit an access request. To submit an access request, parties must log into the EFSSystem, select "eFile & eService with the Administrative Review Board," select the button "Request Access to Appeals," search for and select the appeal the party is requesting access to, answer the questions as prompted, and click the button "Submit to DOL."

Additional information regarding registration for access to and use of the EFS system, including for parties responding to a filed appeal, as well as step-by-step User Guides, answers to frequently asked questions (FAQs), video tutorials and contact information for login.gov and EFS support can be found under the "Support" tab at https://efile.dol.gov.

3. Effective Time of Filings

Any electronic filing transmitted to the Board through the EFS e-File system or via an authorized designated e-Mail address by 11:59:59 Eastern Time shall be deemed to be filed on the date of transmission.

4. Service of Filings

A. Service by Parties

Service on Registered EFS Users: Service upon registered EFS users is accomplished automatically by the EFS system.

Service on Other Parties or Participants: Service upon a party that is not a registered EFS user must be accomplished through any other method of service authorized under applicable rule or law.

B. Service by the Board

Registered e-filers will be e-served with Board-issued documents via EFS; they will not be served by regular mail (unless otherwise required by law). If a party unrepresented by counsel files their appeal by regular mail, that party will be served with Board-issued documents by regular mail. Any party may opt into e-service at any time by registering for an EFS account as directed above, even if they initially filed their appeal by regular mail or delivery.

5. Proof of Service

Every party is required to prepare and file a certificate of service with all filings. The certificate of service must identify what was served, upon whom, and manner of service. Although electronic filing of any document through the EFS system will constitute service of that document on all EFS-registered parties, electronic filing of a certificate of service through the EFS system is still required. **Non EFS-registered parties must be served using other means authorized by law or rule.**

6. Inquiries and Correspondence

After an appeal is filed, all inquiries and correspondence related to filings should be directed to the Office of the Clerk of the Appellate Boards by telephone at 202-693-6300 or by fax at 202-513-6832. Other inquiries or questions may be directed to the Board at (202) 693-6200 or ARB-Correspondence@dol.gov.