UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

COVINGTON DISTRICT OFFICE

Issue Date: 05 September 2023

In the Matter(s) of:

MATT ECKHARDT,
Pro Se Complainant,

v.

NORTH AMERICAN COMPOSITES CO.,
Respondent.

CASE NO(S).: 2022-STA-2

Appearance:
Martina Sailer, Esq.
For Respondent

PATRICK M. ROSENOW
District Chief Administrative Law Judge

DECISION AND ORDER

This proceeding arises under the employee protective provisions of the Surface Transportation Assistance Act (STAA)[1] and its implementing regulations.[2] The Secretary of Labor is empowered to investigate and determine "whistleblower" complaints filed by employees of commercial motor carriers who are allegedly discharged or otherwise discriminated against with regard to the terms and conditions of their employment because the employee refused to operate a vehicle when such operation would violate a regulation, standard, or order of the United States related to commercial motor vehicles.

Procedural Background

Complainant filed his initial online complaint with the Occupational Safety and Health Administration (OSHA) on 30 Dec 20. He alleged that he was targeted by his supervisor because he called DOT and reported that the supervisor attempted to make him and another driver exceed hours of service. He alleged he was harassed, intimidated, suspended, laid off, terminated, and denied rehire. OSHA denied his complaint on 28 Sep 21, and he filed a timely objection and request for hearing.

[1] P.L. 103-272 at 49 U.S.C. § 31105.
[2] 29 C.F.R. Part 1978.

The case was assigned to me, and I conducted an initial scheduling conference call with both parties. Because the OSHA complaint lacked specificity, I ordered Complainant to file a more detailed set of allegations. He filed a complaint[3] alleging that:

> Ryan Neal tried to play him and another driver against each other. After he told Neal a certain trip could not be done in a specific time, Neal went to a different driver with the same trip in the same allotted time. The other driver told Neal the same thing he had said. He then complained to Jerry Davis about Neal having done that. Davis said he would talk to Neal, after which Neal came back and verbally abused him for not following protocol. Neal continued to abuse him after that.
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> On another occasion, he had pickups and deliveries outside of Houston. He had to wait for the pickups, and there was no way he could do it in one day like Neal wanted him to, even though that made Neal unhappy.
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> On a third occasion, he was running close to his 60-hour, 7-day limit and could not make a final delivery. The customer agreed to meet him at an earlier stop so he could make it back in time. Neal was angry that he did that, even though he was just obeying DOT law. He called Davis again and complained about Neal.
>
> Eventually, he called DOT and filed an official complaint with case number 100153530 on 14 Aug 20. He told Jennifer, Respondent's supervisor in Louisiana, that he filed the complaint.
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> The final incident was when he told Neal he was having trouble with his jack and could not make his last stop. Neal was angry and claimed the jack was serviceable. Eventually, Respondent prevented him from changing the jack. He asked if he was going to get fired because he could not make his deliveries since his jack did not work.
>
> On a Monday, he called HR and was told he was on suspension. The following Thursday, he was called to a meeting to terminate him. He knows Respondent did that because he turned Neal into Davis and DOT.

After Respondent filed a Motion to Dismiss for failure to state a claim upon which relief could be granted, I conducted a second conference call to explain the Motion to Complainant and emphasize the need for him to submit a clear and specific set of factual allegations, explaining why they make him a whistleblower entitled to relief under the Act. During the call, he clarified that he was only alleging hours of service as a protected activity.

When Complainant responded, he simply resubmitted his previous rambling statement, albeit sworn and notarized. He did attach a weekly time sheet ending on 2 Aug 20 and a

[3] The complaint appears to have been dictated by Complainant into his phone or other digital device and was a somewhat confusing stream of consciousness.

statement from his coworker who made general allegations that Neal told drivers to violate hours of service.

Respondent then re-urged its motion to dismiss, revisiting its arguments that it was never aware of any complaints to DOT and terminated Complainant for insubordination. I denied the motion, finding Complainant's allegations sufficient to meet the minimal standard of stating a cause of action.

Respondent then filed a second Motion to Dismiss for failure to state a claim upon which relief could be granted. Respondent argued that it was never made aware of any complaints to DOT until long after Complainant was fired. Respondent further noted that Complainant's termination was a consequence of his insubordination, rather than any protected activity. It cited three examples of that insubordination. I denied the motion, finding Complainant's allegations adequate to state a cause of action and giving leave to Respondent to file for dismissal because of evidentiary insufficiency.

Respondent then filed a Motion for Summary Decision for evidentiary insufficiency. It argued there is no genuine issue of material fact that would allow a finding of any protected activity or that the protected activity played a role in the adverse action. Complainant's response was to resubmit his Bill of Particulars and submit a weekly time sheet covering the period from 27 Jul 20 to 2 Aug 20,[4] a notarized statement from a coworker, and his additional statement. I denied the motion, citing the requirement to weigh all credibility and take all inferences in favor of Complainant.

On 28 Mar 22, I held a hearing at which the parties were afforded a full opportunity to call and cross-examine witnesses, offer exhibits, make arguments, and submit post-hearing briefs. My decision is based upon the entire record, which consists of the following:[5]

Witness Testimony of:

Complainant Jerry Davis Ryan Neal

Exhibits:[6]

Respondent's Exhibits (RX) 1-8[7]
Complainant's Exhibits (CX) 1-5

[4] The same document submitted by Respondent.

[5] I have reviewed and considered all testimony and exhibits admitted into the record. Reviewing authorities should not infer from my specific citations to some portions of witness testimony and items of evidence that I did not consider those things not specifically mentioned or cited.

[6] Counsel were cautioned that since a number of exhibits appeared to be *en globo* collections of records, counsel must cite during the hearing or in their post-hearing briefs to the specific page of any exhibit in excess of 20 pages for that page to be considered a part of the record upon which the decision will be based. Tr. 8.

[7] I allowed the record to be held open post hearing for rebuttal exhibits.

Legal Standards

The Act prohibits taking adverse action against an employee because:[8]

> (1) A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because—
>
> (A)(i) the employee … has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety … regulation, standard, or order, or …
>
> (ii) the person perceives that the employee has filed or is about to file a complaint or has begun or is about to begin a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order;
>
> (B) the employee refuses to operate a vehicle because—
>
> (i) the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety, health or security[.]

To prevail on his claim, a complainant must prove by a preponderance of the evidence that he engaged in protected activity, that the respondent took an adverse employment action against him, and that his protected activity was a contributing factor in the unfavorable personnel action. If he proves by a preponderance of evidence that his protected activity was a contributing factor in the unfavorable personnel action, a respondent may avoid liability if it demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of the protected activity.[9] Internal complaints to management are protected activity under the Act, although the complainant must prove by a preponderance of the evidence that he actually made such an internal complaint.[10]

For a finding of protected activity in communicating a concern about a violation of a regulation, a complainant need only show that he reasonably believed in the existence of a safety violation.[11] On the other hand, if he refuses to drive because of his concern about violating a regulation, his reasonable belief is not enough and he must show by a preponderance of the evidence that driving would have actually violated the regulation.[12]

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[8] 49 U.S.C. § 31105(a)(1).

[9] 75 Fed. Reg. 53545, 53550; 49 U.S.C.A. § 42121(b)(2)(B)(ii); *Salata v. City Concrete, LLC*, ARB Nos. 08-101, 09-104, ALJ Nos. 2008-STA-012, 2008-STA-041 (ARB Sep. 15, 2011).

[10] *Williams v. CMS Transportation Services, Inc.*, ALJ No. 1994-STA-005 (Sec'y Oct. 25, 1995) (Complainant failed to carry that burden where there was no evidence or written documentation supporting the Complainant's allegations that he made internal complaints.).

[11] *Bethea v. Wallace Trucking Co.*, ARB No. 07-057, ALJ No. 2006-STA-023, slip op. at 8 (ARB Dec. 31, 2007); *Calhoun v. United Parcel Serv*., ARB No. 04-108, ALJ No. 2002-STA-031, slip op. at 11 (ARB Sep. 14, 2007); *Ulrich v. Swift Transportation Corp.*, ARB No. 11-016, ALJ No. 2010-STA-041 (ARB Mar. 27, 2012).

[12] *Hilburn v. James Boone Trucking*, ARB No. 04-104, ALJ No. 2003-STA-045 (ARB Aug. 30, 2005).

Federal regulations define hours of service limits for drivers: [13]

> a) No motor carrier shall permit or require any driver used by it to drive a property-carrying commercial motor vehicle, nor shall any such driver drive a property-carrying commercial motor vehicle:
>
> (1) More than 11 cumulative hours following 10 consecutive hours off-duty;
>
> (2) For any period after the end of the 14th hour after coming on duty following 10 consecutive hours off duty, except when a property-carrying driver complies with the provisions of § 395.1(o) or § 395.1(e)(2).
>
> (b) No motor carrier shall permit or require a driver of a property-carrying commercial motor vehicle to drive, nor shall any driver drive a property-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after—
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> (1) Having been on duty 60 hours in any period of 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or
>
> (2) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

Position of the Parties

One of the overriding themes of this litigation has been the difficulty of identifying the specific parameters of Complainant's alleged protected activities. Nonetheless, ultimately it was possible to distill his allegations into four incidents.

1. After he told Neal he could not make a trip within the rules, Neal tried to get another driver to do it.
2. After he told Neal he had to shut down and spend the night at a hotel because of hours, Neal was unhappy.
3. He refused to drive a delivery because of running out of time.
4. He filed a complaint with the FMCSA.

Respondent denies any knowledge about the first two alleged protected activities. It argues that Complainant's refusal to drive in the third allegation fails to qualify as protected activity because it would not have resulted in an actual violation of regulations. Finally, it argues that no one from Respondent was aware of any complaint to a governmental agency until after it had terminated Complainant.

[13] 49 C.F.R. § 395.3.

The Evidentiary Record

Credibility

The most relevant evidence in this case was the testimony of the three witnesses, Complainant, Neal, and Davis. As noted above, Complainant's allegations started as vague and remained so. Just as he was unable to provide any specific information in his Bill of Particulars, the transcript is replete with his inability to recall details about distances, times, locations, or dates. He repeatedly apologized for his incomplete recollection of those specifics, and his demeanor was of a witness who was attempting to testify honestly and believed what he was saying but was heavily handicapped by being unable to answer the most basic questions about his allegations.[14] Notwithstanding what appeared to be his good faith, Complainant's flawed ability to recall was so pervasive that it made his testimony untrustworthy. As with Complainant, I found both Neal and Davis to be committed to testify honestly. However, they appeared far more reliable in terms of their ability to accurately recall details.[15]

Protected Activities

Complainant testified that at first there was no problem with telling Neal he could not make a running time. However, Neal suddenly started pushing back because he was using Google to calculate distances and required times to make runs. He felt that Neal just wanted an efficiency bonus and did not care who broke the law. At the same time, Complainant candidly testified that he was never concerned about a compromise of safety in any of the situations. He similarly conceded that the disagreement he had with Neal over the pallet jack battery was not related to hours of service.

Neal corroborated Complainant's testimony that he used Google maps to calculate driving time. He took into account whether the driver had to traverse heavily populated areas with traffic. He also used driver management software to calculate available hours and avoid running drivers close to the maximum.

Neal Goes Driver Shopping

Complainant's first specific example was when he told Neal he could not make a certain trip in the required time. Neal said, "okay," and did not try to make him do it, but Neal then went and asked another driver to take the trip. The other driver also refused. At

[14] Or was simply wrong, as was his relatively certain testimony that he was talking to Jennifer. Indeed, Complainant objected when Davis testified there was no Jennifer, insisting a call be made to confirm that he had been talking to Jennifer. He later decided he had been wrong. While the mistake in name might not be significant, mistakes about what they discussed would be.

[15] That may have been in part because Complainant was the one required to provide details, but I was far more confident in the accuracy of their testimony.

the same time, a warehouse employee was gratuitously batting his opinion that he could do the trip but just did not want to. Complainant felt that Neal was trying to play the drivers against each other. He was unable to give a date but thought it was maybe three to six months after Neal took over. He thought it was a Houston run but could not say how many stops were included. Complainant also intimated that it might have happened more than once, but the driver was able to legally make the run another time. Complainant testified he was not happy about Neal running to another driver, so he called Davis, who told him he would talk to Neal about it. Neal then got upset and yelled at him because he had gone over Neal's head to Davis. Complainant testified that getting yelled at for going to Davis was the only consequence of his refusal.

Both Neal and Davis testified that they could not recall any of that. Davis did not rule out having received the call but explained that, if he did, it was so minor that he took no action on it and forgot about it.

Overnight Near Houston

Complainant testified that the next incident was maybe a few months after the first one. He had a pickup to make outside of Houston, but he forgot which town. He told Neal he would not be able to legally make it back the same day, because sometimes there is a long wait to pick up at a refinery. He thinks it was during the week but does not know what day it was. He only had an hour or two left, it takes four hours to get back from Houston, and he was on the far side of Houston. As it got later in the day, he told Neal he would have to spend the night. Neal could not do anything about it but was upset and later told all the other employees they had to work extra because Complainant did not get back. Complainant conceded that Neal might have been joking about it, but he was sure Neal wanted him to come back the same day. Complainant testified that he thought he called Davis to complain that Neal was trying to get them to work beyond the maximum hours. Davis told Complainant he would talk to Neal. Complainant further testified that, at that point, Neal started getting more aggressive and abusive about Complainant's reports to Davis.

Both Neal and Davis testified that they could not recall any of that. Davis did not rule out having received the call but explained that, if he did, it was so minor that he took no action on it and forgot about it.

Customer Delivery Beyond the Six- or Seven-Day Limit

Complainant testified he did not know the exact date, but the next incident happened a few months after the previous one. Before the trip even started, he told Neal he was going to be tight on his 60-hour/7-day limit. Neal told Complainant he had to make the deliveries whether he wanted to or not. Complainant was also concerned about being able to find a place to park his rig in the place he was supposed to meet the customer, because they did

not allow 18-wheelers. Complainant suggested to Neal that the customer could meet him and cut some of the time off, but Neal said no. Complainant did not check the mileage, but it could have been a 1.9-mile difference between meeting the customer at the customer's location and having the customer meet him.

When he was actually on the run, he was running short of time, so he did ask the customer to meet him. The customer did, and Complainant testified that he thought he had an hour to an hour and a half left when he completed his trip. With his post-trip inspection, he probably had an hour to spare. He told Neal what he had done, but Neal never responded. Complainant testified that he thinks it could have taken him more than between an hour and a half to two hours to meet the customer at the original location, assuming there was a place he could park.

Complainant testified that, although Respondent might have locations that operate seven days a week, his local terminal only operates Monday through Friday.

Neal testified that Google software indicated there was only a 1.9-mile difference between Complainant going to his assigned stop and having the customer come meet him. He believed the round-trip and the delivery should not have taken more than a half hour. He credibly explained how the timesheets show that he had sufficient time to go to the customer's location without exceeding hours of service whether they apply the 7- or 8-day rule.

Davis testified that Complainant was wrong. Respondent was told it could use either rule in that location, as long as it used the same one all the time. Respondent chose and is subject to the 70-hour/8-day rule. Davis heard about the incident after the fact and recalled that it coincided with the dispute over the pallet jack.

Complainant's Call to DOT

Claimant testified that he thought he had called DOT on 14 Aug 20 to complain about hours-of-service violations. He does not recall where that falls in a timeline with his other alleged protected activities. He thinks it was after the second one, but he told DOT Neal was pushing them to drive in excess of the legal limit and was hoping DOT would intervene with Respondent. Complainant explained that DOT told him they would investigate it, but he never heard anything back. He never told Neal or Davis about the phone call because they would have gotten mad at him.

Complainant further testified that he regularly talked to Jennifer in Respondent's Louisiana office and they got along so well they were like friends. He did not know her last name. He told her what he was going through with Neal about the pallet jack and hours of service. Jennifer told him he should have just gone to the customer's location. When he told her he had reported Neal to DOT, she said she wished he had not done that because now he would

be targeted by Neal. She never told him she was going to tell Neal or Davis, but he thought she might.

Davis testified that he did not find out anything about Complainant's communication to DOT until the OSHA whistleblower investigation started after Complainant had already been terminated. He also explained that Respondent had no employees named Jennifer in Louisiana or Texas. Davis testified he did not find out anything about Complainant having communicated with DOT until he learned it from Davis.

Respondent's Grounds for Termination

Davis testified that Complainant called him to report that he would not have enough battery life in his pallet jack to finish his run on 14 Aug 20. He called Neal who assured him the jack had at least 40% battery life remaining, which was enough to make the last delivery. There was no argument about hours of service.

Davis further testified that he got another phone call on 6 Dec 20 from Complainant who reported he would not make deliveries the next day because Neal had locked the batteries, which would prevent him from charging his battery to 100% for the next day's run. He called Neal, who explained that there was 80% of battery life left, which was enough, and the Tech had told him repeatedly that charging batteries to the hundred percent level wears them out prematurely. When Complainant did not report for work the next day, Respondent decided to fire him.

Neal testified that Complainant would be very disrespectful when he disagreed with him in front of other employees. He explained that the reason for Complainant's termination was a series of events of gross insubordination. He noted that there were several occasions where Complainant refused to do what he was asked to do, culminating in the final event in December of 2020.

Neal further testified that Complainant called him on 14 Aug 20 to report that he had a problem with his pallet jack because the battery charge was dropping more than it typically does. Complainant told him the battery was at 40%. They talked about where Complainant was on his route and had only one more stop to go. He concluded Complainant should be able to complete the third stop since it only had two pallets. He told Complainant to complete the route and call him from the final stop. After an hour or an hour and a half, he had not heard back, so he called Complainant who said he had skipped the last stop and was headed back. He told Complainant to turn around and finish that last stop, but Complainant refused. Hours of service was not an issue; it was all about the pallet jack battery. When Complainant returned, they used the jack to move the two pallets. Although battery life dropped from 40% to 10%, it was sufficient to do the job. Respondent gave Complainant a verbal warning for insubordination.

Neal explained that they had recently replaced all the batteries in the pallet jacks. The technician explained that they should run the charge down in the batteries as much as possible before recharging to maximize battery life. Neal decided to put a lock on all the pallet jacks to prevent them from being repeatedly overcharged and decreasing the life of the batteries. On 6 Dec 20, Complainant called to say his battery was only at 80% and that he wanted to charge it to 100%, but he could not because it was locked. Neal knew that charge was sufficient for the route Complainant had and told him to take the jack as is and run his route. Complainant was adamant that he be allowed to charge his jack and said he would not run his route unless he was allowed to do so. He warned Complainant not to do that. Later that day, he got a phone call from Davis telling him Complainant had called and asking about the situation.

The next day, he came to work and noticed Complainant's truck was still in its dock. He unsuccessfully tried to call Complainant and then got a call from HR. HR told him Complainant had called and wanted to know what was going on. That was the first time he had seen a driver flat out refuse to take a route. Based on that insubordination, Respondent decided to fire Complainant.

Complainant's testimony about the issues with the pallet jack battery were relatively consistent with that of Neal and Davis, although he believes the battery only had 70% when it was locked down. He explained that he was concerned that the battery would die and leave him stranded. He also notes that, when he called HR about the batteries, she said she was going to suspend him so he could not go back to work and fight with Neal. But Respondent ended up firing him.

Analysis

Complainant's first two alleged protected activities[16] are so devoid of detail that the allegations are largely conclusory. They are entirely based on Complainant's admittedly faulty memory and consequently untrustworthy testimony. Based on the record, Complainant falls far short of establishing by a preponderance of the evidence that he refused to drive in a situation that would have resulted in an actual violation of regulations or that he communicated to Neal or Davis his reasonable concern that there would be a violation of regulations.

However, even if those allegations and his testimony were found to establish protected activity, the finding would be moot. The credible testimony of Neal and Davis establishes they recalled nothing about either of those events and, thus, that the events could not have been a contributing factor in any adverse action.

[16] See "Neal Goes Driver Shopping" and "Overnight Near Houston."

On the other hand, Complainant's call to DOT, if based on his reasonable concern, would constitute protected activity. However, based on the totality of the evidence and the credible testimony of Neal and Davis, I find the evidence insufficient to establish that Complainant communicated a reasonable concern about potential hours of service violations. However, even if that were not the case and the call did qualify as protected activity, it could have played no role in any adverse action, since the record clearly establishes neither Neal nor Davis was aware of that call until long after Respondent fired Complainant.

A similar analysis applies to Complainant's refusal to drive the extra 1.9 miles and meet his customer. I find the evidence falls far short of establishing that Complainant's refusal avoided what would have been an actual violation of the regulations. It similarly would fail to show a protected communication as he would not have had a reasonable belief of a violation of the regulations. However, in the event that that his refusal did constitute a protected activity, I note Neal appears to have viewed it as an act of insubordination. Thus, I would have found it to be a contributing factor. Nevertheless, I find the evidence clearly and convincingly shows that, even in the absence of his refusal to drive the 1.9 miles, Respondent would have nonetheless terminated Complainant because of his direct refusal to follow Neal's instructions about the batteries and his calls to HR and Davis complaining about Neal regarding matters unrelated to an actual violation or reasonable belief that a violation of the regulations occurred or would have occurred.

Consequently, the complaint is **DISMISSED.**

SO ORDERED.

PATRICK M. ROSENOW
District Chief Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of 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 EFS System, 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.