



**In the Matter of:**

**CAROLYNN MASCAREÑAS,**  
**COMPLAINANT,**

**ARB CASE NO. 15-068**

**ALJ CASE NO. 2014-STA-047**

**v.**

**DATE: August 14, 2015**

**INTERSTATE HOTELS &  
RESORTS, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Petitioner:*

**Carolyn Mascareñas, *pro se*, Westminster, Colorado**

*For the Respondent:*

**Samuel J. Webster, Esq., *Wilcox Savage*, Norfolk, Virginia**

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge* and Luis A. Corchado,  
*Administrative Appeals Judge***

### **FINAL DECISION AND ORDER DISMISSING APPEAL**

The Complainant, Carolyn Mascareñas, filed a complaint alleging that the Respondent Interstate Hotels & Resorts retaliated against her in violation of the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as

amended.<sup>1</sup> On May 12, 2015, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order Denying Benefits (D. & O.), in which he dismissed Mascareñas's complaint. The Secretary of Labor has delegated authority to issue final agency decisions under the STAA to the Administrative Review Board.<sup>2</sup> To perfect a timely appeal from an administrative law judge's decision, a party must file a petition for review with the Board within fourteen days of the date on which the judge issued his decision.<sup>3</sup>

Mascareñas did not file a petition for review with the Board within fourteen days of the date of the ALJ's D. & O. On June 13, 2015, Mascareñas filed an "Initial Brief in Appeal." However, even if this brief was considered to be her petition for review, it would be untimely because she filed it more than fourteen days after the ALJ issued his D. & O. On June 26, 2015, Mascareñas filed a petition for review that was also untimely. On July 7, 2015, Respondent filed a Motion to Strike Complainant's Petition for Review and Complainant's Initial Brief in Appeal as Untimely.

The STAA's limitations period is not jurisdictional and therefore is subject to equitable modification. In determining whether the Board should toll a statute of limitations, we have recognized four principal situations in which equitable modification may apply: (1) when the defendant has actively misled the plaintiff regarding the cause of action; (2) when the plaintiff has in some extraordinary way been prevented from filing his or her action; (3) when the plaintiff has raised the precise statutory claim in issue but has done so in the wrong forum, and (4) where the employer's own acts or omissions have lulled the plaintiff into foregoing prompt attempts to vindicate his rights.<sup>4</sup> But the Board has not found these situations to be exclusive, and an inability to satisfy one is not necessarily fatal to Mascareñas's claim.<sup>5</sup>

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<sup>1</sup> 49 U.S.C.A. § 31105(a) (Thomson/West Supp. 2014). Regulations implementing the STAA are found at 29 C.F.R. Part 1978 (2014).

<sup>2</sup> See Secretary's Order No. 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,379 (Nov. 16, 2012); 29 C.F.R. § 1978.110(a).

<sup>3</sup> See 29 C.F.R. § 1978.110(a).

<sup>4</sup> *Woods v. Boeing-South Carolina*, ARB No.11-067, ALJ No. 2011-AIR-009, slip op. at 8 (ARB Dec. 10, 2012).

<sup>5</sup> *Id.*

Mascareñas bears the burden of justifying the application of equitable tolling principles.<sup>6</sup> Accordingly, we ordered Mascareñas to show cause why her appeal should not be dismissed as untimely.

In her reply to the show cause order Mascareñas did not specifically address any of the four principal situations the Board has recognized for tolling the limitations period. But she appears to argue that extraordinary circumstances prevented her from timely filing. She avers that the short time period for filing a petition for review combined with stress due to a personal medical condition and the repercussions for her family prevented her from complying with the deadline for filing her petition for review. While the Board has held that a medical condition that prevents a complainant from timely pursuing his or her legal rights may qualify as an “extraordinary” circumstance that justifies equitable tolling,<sup>7</sup> we do not find that Mascareñas has established that her condition precluded timely completion of her petition. While the Board is sympathetic to the stresses caused by Mascareñas’s medical condition, she has failed to establish that she was so completely incapacitated that she could neither file a petition for review, or at the very least, file a motion for enlargement of time to file a petition.

Accordingly, we **GRANT** Respondent’s Motion to Strike Complainant’s Petition for Review and Complainant’s Initial Brief in Appeal as Untimely and **DISMISS** her appeal because she did not timely file her petition for review and failed to establish grounds for tolling of the limitations period.

**SO ORDERED.**

**LUIS A. CORCHADO**  
**Administrative Appeals Judge**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

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<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Prince v. Westinghouse Savannah River Co.*, ARB No. 10-079, ALJ No. 2006-ERA-001, slip. op. at 6-7 (ARB Nov. 17, 2010), *aff’d sub nom.*, *Prince v. Solis*, 487 Fed. Appx. 773 (4th Cir. 2012) (citing *Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999) (plaintiff who was “completely psychiatrically disabled” such that she could not effectively communicate with counsel and therefore could not timely pursue her claim)).