



IN THE MATTER OF:

SHERVIS R. SMITH,

ARB CASE NO. 18-021

COMPLAINANT,

ALJ CASE NO. 2017-STA-060

v.

DATE: February 21, 2018

KAREEM TRANSPORTATION,

and

SERPRO LOGISTICS,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER DISMISSING APPEAL

On December 13, 2017, a Department of Labor Administrative Law Judge (ALJ) issued a Ruling on Respondent's Motion for Summary Decision and Order of Dismissal (O. D.) in this case arising under the whistleblower protection provisions of the Surface Transportation Assistance Act.¹ On January 3, 2018, Complainant Shervis Smith filed a number of documents with the Administrative Review Board. From this filing, Smith's intentions were unclear.

The ALJ's O.D. included a statement regarding the parties' appeal rights. O.D. at 7-8. Complainant has not filed a document identified as a "petition for review," nor did he file the documents (by postmark) within fourteen days of the date on which the ALJ issued his decision. Nevertheless, because Complainant is representing himself, we erred on the side of caution and considered the documents to be a petition for review.

¹ 49 U.S.C.A. § 31105 (Thomson Reuters 2016) (STAA).

But the Board issued an order informing Smith that before it could accept the petition for review, Smith must meet certain procedural requirements. First, if Smith intended to request the Board to review the ALJ's O.D., he was required to serve all documents that he attempted to file with the Administrative Review Board on Respondents' counsels and provide the Board with a certificate of service no later than January 22, 2018. Smith was cautioned that if he failed to provide this certificate, this action would be dismissed.

Second, because Smith filed the documents more than fourteen (14) days after the ALJ issued his Order, there was a question regarding the timeliness of Smith's petition for review. Nevertheless, the period for filing a petition for review with the ARB is not jurisdictional and therefore is subject to equitable modification.² Thus, we ordered Smith to show cause no later than January 26, 2018, why the Board should not dismiss the petition as untimely. We cautioned Smith that if he failed to timely respond to this Show Cause Order, the Board could dismiss his appeal without further notice.

Smith failed to comply with both of the Board's requirements for his appeal to proceed. He neither established that he had served the Respondents' counsels with the documents he sent to the Board, nor did he show cause why the Board should toll the limitations period. Accordingly, his appeal is **DISMISSED**.

FOR THE ADMINISTRATIVE REVIEW BOARD:

Janet R. Dunlop
General Counsel

Note: Questions regarding any case pending before the Board should be directed to the Board's Paralegal Specialists:

Telephone: (202) 693-6200

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² *Accord Hillis v. Knochel Bros.*, ARB Nos. 03-136, 04-081, 04-148; ALJ No. 2002-STA-050, slip op. at 3 (ARB Oct. 19, 2004); *Overall v. Tennessee Valley Auth.*, ARB No. 98-011, ALJ No. 1997-ERA-053, slip op. at 40-43 (ARB Apr. 30, 2001).