



IN THE MATTER OF:

JAMEL ELLERBEE,

ARB CASE NO. 2019-0059

COMPLAINANT,

ALJ CASE NO. 2019-STA-00011

v.

DATE: JUL - 3 2019

ANNETT HOLDINGS, INC.  
d/b/a TMC TRANSPORTATION,

RESPONDENT.

### ORDER DISMISSING PETITION FOR REVIEW

On May 21, 2019, the Administrative Review Board (Board) issued an Order to Show Cause in this case requiring Complainant to explain why his petition for review should not be dismissed as untimely filed. On May 24, 2019, the Board received Complainant's response, in which he describes delays in reviewing his mail,<sup>1</sup> problems filing his petition online, and the difficulties inherent in being a self-represented litigant while employed full-time. Complainant makes no assertion that Respondent or any other person prevented his timely filing or that Complainant had misfiled the petition with another agency. The matters raised by Complainant are not extraordinary and are similar to those which confront any self-represented individual attempting to file a petition with this Board. Accordingly, the Board declines to apply equitable tolling to extend the filing deadline in this matter, and Complainant's petition for review is hereby **DISMISSED** as untimely.

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<sup>1</sup> In this regard, Complainant asserts that the Decision and Order issued by the ALJ was not received by him until May 6, 2019. His petition for review was due four days later on May 10, 2019, which was 14 days after the date of the decision by the Administrative Law Judge. See 29 C.F.R. § 1978.110(a). Although not applicable to the instant facts, the Federal Rules of Appellate Procedure (FRAP) provide that three days are added to filing deadlines unless service of the document triggering the filing deadline was effected on the same day as stated in the proof of service; this could have extended Complainant's filing deadline to May 13, 2019, had the facts favored Complainant and the Board elected to apply the FRAP standard to this matter. All that being noted, Complainant did not file his petition until May 20, 2019.

The decision and order of the Administrative Law Judge below, dated April 26, 2019, is the final order of the Secretary of Labor.

**FOR THE ADMINISTRATIVE REVIEW BOARD:**



**William T. Barto**  
**Chief Administrative Appeals Judge**

**Note:** Questions regarding any case pending before the Board should be directed to the Board's staff. Telephone: (202) 693-6200, Facsimile: (202) 693-6220