



Issue Date: 04 January 2016

CASE NO.: 2010-AIR-00024

*In the Matter of:*

GUY COBB,  
*Complainant,*

v.

FEDEX CORPORATE SERVICES,  
*Respondent.*

**DECISION AND ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY  
DECISION and DISMISSING COMPLAINT**

On November 20, 2015, Respondent FedEx Corporate Services ("FCS") filed its motion for summary decision. After being provided with the text of the applicable regulation and instructed on how to respond, Complainant Guy Cobb ("Mr. Cobb" or "Complainant") filed a timely opposition on December 11, 2015.

For the reasons set forth below, I find that there is no dispute of material fact as to whether Mr. Cobb's having engaged in protected activity contributed to Respondent's decision to terminate him.<sup>1</sup> Accordingly, FCS is entitled to summary decision in its favor.

**Legal Standards**

Summary decision may be entered pursuant to 29 C.F.R. § 18.72 under circumstances in which no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Id.*; see *Gillilan v. Tennessee Valley Authority*, 91-ERA-31 at 3 (Sec'y, Aug. 28, 1995); *Flor v. United States Dept. of Energy*, 93-TSC-1 at 5 (Sec'y, Dec. 9, 1994). The party opposing a motion for summary decision must "cite to particular parts of materials in the record" or show that the cited materials "do not establish the absence...of a genuine dispute...." 29 C.F.R. § 18.72(c)(1)(i), (ii). See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). Only disputes of fact that might affect the outcome of the suit will properly prevent the entry of a summary decision. *Anderson*, 477 U.S. at 251-52. In determining whether a genuine issue of material fact exists, however, the trier of fact

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<sup>1</sup> For the benefit of reviewing authorities, I have determined that disputes of material fact remain with respect to (1) whether Mr. Cobb engaged in protected activities and (2) whether FCS has shown by clear and convincing evidence that they would have terminated Mr. Cobb even in the absence of his protected activity. These factors will not be analyzed in this Decision and Order, as FCS will prevail on the "contributing factor" element.

must consider all evidence and factual inferences in favor of the party opposing the motion. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Thus, summary decision should be entered only when no genuine issue of material fact need be litigated. *Poller v. Columbia Broadcasting System, Inc.*, 368 U.S. 464, 467 (1962). When a respondent moves for summary decision on the ground that the complainant lacks evidence of an essential element of his claim, the complainant is then required under Fed. R. Civ. P. 56 and 29 C.F.R. Part 18 to present evidence demonstrating the existence of a genuine issue of material fact. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *Celotex Corp. v. Catrett*, *supra*.

To prevail on his claim of discrimination under the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (“the Act” or “AIR21”), Mr. Cobb must demonstrate by a preponderance of the evidence that (1) he engaged in protected activity; (2) an unfavorable personnel action was taken against him; and (3) the protected activity was a contributing factor in the unfavorable personnel action taken against him. *Sewade v. Halo-Flight, Inc.*, ARB No. 13-098, ALJ No. 2013-AIR-009, slip op. at 6 (ARB Feb. 13, 2015); 49 U.S.C.A. § 42121(b)(2)(B)(i); 29 C.F.R. § 1979.109(a). If Mr. Cobb cannot establish one of these requisite elements, the entire claim fails. *See Beatty v. Inman Trucking*, ARB No. 11-021, ALJ Nos. 2008-020 and -021, slip op. at 5 (ARB June 28, 2012). If Complainant satisfies that burden, FCS may escape liability only if it can show by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected behavior. 49 U.S.C. § 20109(b)(2)(B)(ii); 29 C.F.R. § 1979.109(a).

Before turning to the merits of the motion, I will briefly address one other matter identified by the parties: whether the denial of a similar motion for summary judgment by Judge Krantz precludes my addressing the present motion. Mr. Cobb suggests that I should not allow Respondent to “bury all previous decisions and evidence,” nor should I grant this “duplicate motion.” FCS argues, on the other hand, that Judge Krantz’s order denying its previous motion took place before completion of discovery, and that he did not address the “contributing factor” element of the case. FCS is correct. Judge Krantz’s order denying the parties’ motions for summary decision was brief, and only summarily stated that there were disputed issues of material fact. With respect to FCS’s motion, Judge Krantz spent substantial time on whether Mr. Cobb engaged in protected activity, but did not discuss whether it contributed to the decision to terminate Mr. Cobb. Furthermore, the prior motions were premature, as they were filed before completion of discovery. With the additional discovery conducted after Judge Krantz’s order, the evidence is more complete, and it is proper to bring another motion. Rule 18.72 permits a party to file a motion for summary decision “at any time until 30 days before the date fixed for the formal hearing” and FCS met the time restriction here. The Rule does not on its face preclude more than one motion. Further, the Rule contemplates such practice when discovery has not been completed. *See* 29 C.F.R. § 18.72(d).

Accordingly, Mr. Cobb’s objection based on his suggestion that FCS should not be permitted to file a “duplicate” motion is overruled.

## **Findings of Undisputed Fact and Conclusions of Law**

### *Findings of Fact<sup>2</sup>*

Based on the evidence submitted with Respondent's motion, Complainant's opposition, and other materials in the record, I find that the following material facts are undisputed. For purposes of this Decision and Order, I accept the excerpts from the discovery requests and responses as transcribed in Complainant's opposition as accurate transcriptions of the requests propounded by Complainant and the responses provided by Respondent.

Respondent FCS is one of the FedEx family of companies led by FedEx Corporation. Other companies include FedEx Express, FedEx Ground, FedEx Freight, FedEx Office, FedEx Custom Critical, and FedEx Trade Networks. FCS began operations in June of 2000 to provide information technology, sales, and marketing support for FedEx Express and FedEx Ground. At present, FCS coordinates sales, marketing, information technology, customer service, and worldwide supply-chain services support for the FedEx brand. FCS's responsibilities include data management and networking expertise behind the package tracking capabilities for FedEx Express, FedEx Ground, and FedEx Freight, along with e-commerce customer contact services and other functions of the corporation's professional services company. [Motion, Exhibit C.]

Complainant started working for FCS on about December 30, 2003. [Respondent's Motion for Summary Decision ("Motion"), Exhibit B, p. 98; Complainant's Opposition to Motion for Summary Decision ("Opposition"), p. 23.] His initial assignment was in the FCS Marketing Group, and he transferred to the Business Continuity and Disaster Recovery department sometime between August 2005 and October 2007. [Motion, p. 4; Opposition, p. 23.]

On December 1, 2007, Mr. Cobb transferred to the Innovation Group, where he was a Capabilities Developer until he was terminated. As a Capabilities Developer, his duties included facilitating the automation of FXI process, methodologies, knowledge management, social networks, websites, and research databases to support the targeted and strategic problem solving/innovation activities of FXI. Additional duties included development of intellectual capital/property such as applications, process, tools, and databases as they related to FXI Innovation. Mr. Cobb's initial supervisor in the Innovation Group was Kenneth Milman; after Mr. Cobb transferred to another group in the same department, his supervisor was Steve Stewart. [Motion, pp. 23-24; Motion, Exhibit E; Opposition, p. 24.]

Mr. Cobb and other individuals toured the Hurricane Creek Tunnel in November of 2006, and Mr. Cobb returned to the tunnel with airfield maintenance employees on December 18, 2006. The Hurricane Creek Tunnel is a culvert under a runway at the Memphis International Airport. The purpose of the tour was assessment of Federal Express Corporation's underground data networks buried near the Hurricane Creek tunnels and under FedEx's SuperHub facilities, including assessment of vulnerabilities in the event of a seismic or terrorist event. [Motion, Exhibit E pp. 111-112 and Exhibit F; Opposition, p. 24.] After the tour, Mr. Cobb prepared an

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<sup>2</sup> Mr. Cobb has, in his opposition, indicated his agreement with certain facts alleged by FCS, but has supplemented those facts with additional facts. I have, for the purpose of this Decision and Order, accepted his supplemental facts where they are supported by evidence.

Enterprise Vulnerability Study to document his concerns about the safety of the runway and the structural integrity of the Hurricane Creek Tunnel. [Motion, Exhibit F; Opposition, p. 24.] He submitted it to his then-director, Michael Rodriguez-Chapman and to Scott Mugno (Managing Director of FedEx Safety) in December of 2006. He sent it by email to Randy DiGirolamo (Senior Manager, FedEx Express Global Operations) on October 31, 2008, and submitted it to unidentified members of FedEx Express' management at a 2007 meeting. [Motion, Exhibit E pp. 111, 133-134; Opposition, pp. 27-30, 34-36 (Respondent's responses to Complainant's Request for Admissions ("RFA")).]<sup>3</sup>

Mr. Cobb communicated his concerns about the Hurricane Creek Tunnel to the Memphis-Shelby County Airport Authority ("MSCAA"), who informed him that the MSCAA had conducted a study which included an assessment of whether the runway could support the Airbus A-380 airplane. (Motion Exhibit B pp. 113-121 and Exhibit G; Opposition at p. 24). At about the same time, FedEx canceled its contract for A-380 aircraft and announced it would be purchasing Boeing 777 aircraft instead. Mr. Cobb communicated with Thomas W. Clarke, who was the MSCAA Director of Engineering and Planning, communicating concerns about the effects of environmental changes, jet engine vibrations on the culvert, as well as its structural integrity, with respect to the use of Boeing 777 aircraft. [Motion, Exhibits F and H.] He was told that MSCAA had commissioned a study regarding the airport's ability to handle the Boeing 777 aircraft. [Motion, Exhibit B pp. 119-120.] FedEx Corporation began flying the Boeing 777 aircraft into and out of Memphis in the fall of 2009, and has done so without incident. [Motion, Exhibit I.] In March of 2010, Sarah Hall, an attorney representing MSCAA, informed Mr. Cobb that the runway was able to withstand the loads of the A-380 and therefore, as the Boeing 777 was a lighter aircraft, the runway could withstand the latter as well.<sup>4</sup> [Motion, Exhibit B pp. 202-204 and Exhibit J.]

On an unidentified date, Mr. Cobb sent a copy of a document entitled "FedEx 2020" to Scott Mugno, Managing Director of FedEx Safety. [Opposition, p. 35, response to Request for Admission No. 33.] Mr. Mugno forwarded it to Randy DiGirolamo, Senior Manager for FedEx Global Operations on February 3, 2009. [*Id.*, response to RFA No. 53.] That document included safety recommendations concerning how to detect cell phone-triggered IEDs using inexpensive spectrometer technology, and safety recommendations concerning the protection of employees from biohazards such as avian flu using germicidal irradiation. [*Id.*, response to RFA Nos. 34 and 35.]

FCS has an Employee Shipping Policy which provides:

Employee Discount Shipping and FedEx Office products/services are restricted to the employee's own personal use. Employees are prohibited from sharing their discount privileges with third parties, including family members. However, third

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<sup>3</sup> In his Opposition, Mr. Cobb alleged that he provided his Enterprise Vulnerability Study to several other identified people, including the FedEx Chairman, Chief Financial Officer, Chief Information Officer, and Chief Information Security Officer. However, he did not provide any evidentiary support for those allegations. For purposes of this Decision and Order, I find therefore that he did not.

<sup>4</sup> Mr. Cobb does not agree that the runway can handle fully-loaded Boeing 777 aircraft, but does not dispute that he was told by Ms. Hall that it could.

parties, shipping ordered items from the employee, may use the employee's discount shipping account number in shipping the items to the employee.

[Motion, Exhibits C, K.] The Employee Shipping Policy became effective on November 22, 2004, just under 11 months after Mr. Cobb was started working at FCS. [Opposition p. 9, quoting Request for Admission No. 2 and Respondent's answer thereto.] At an undetermined time, that policy was made available to employees online. [Motion, Exhibit C.]

Mr. Cobb's mother, father, and brother used his discounted employee shipping account many times between September 5, 2007 and the date of Mr. Cobb's termination. [Motion, Exhibit N, Exhibit B pp. 163-164, Exhibit Q.] After his mother used his employee shipping account number at a FedEx Office location in Lakeland, Florida on a number of occasions, the manager of the Lakeland location, Ron Yunk, called FedEx's alert line on October 9, 2009 to express his concern about those shipments.<sup>5</sup> [Motion, Exhibit L and Exhibit M.] Mr. Yunk was aware at that time that the owner of the shipping account worked for FedEx somewhere in Memphis. [Motion, Exhibit M.] He did not communicate with anyone who supervised Mr. Cobb, and was unaware at that time of the details of Mr. Cobb's concerns about the runway at the Memphis airport.<sup>6</sup> [*Id.*] In mid-October, 2009, Stephanie Crockum-King of FCS's human resources department was informed of an investigation into the misuse of Mr. Cobb's employee shipping discount, and she informed Steve Stewart, Mr. Cobb's manager, of the investigation in November. [Motion, Exhibit O.] On October 26, 2009, Mr. Cobb was interviewed in connection with an investigation into the alleged misuse of his employee account. [Motion, Exhibit N, Exhibit B pp. 163-164.] Mr. Cobb stated that he knew of FCS's policy regarding employee discount shipping<sup>7</sup>, and that he had allowed his mother, brother, and father to use his shipping account. [*Id.*]

Mr. Cobb was terminated on November 13, 2009. [Motion, Exhibit Q; Opposition, p. 26.] His termination letter, signed by Steve Stewart, states that the reason for his termination was "unacceptable conduct," specifically the use of his discounted shipping privileges by members of his family a significant number of times over the previous 18 months. [Motion, Exhibit Q.] Mr. Stewart was unaware of Mr. Cobb's having raised concerns about the safety of the runway at the Memphis airport at the time he made the decision to terminate Mr. Cobb, and Mr. Cobb had never presented his Enterprise Vulnerability Study to Mr. Stewart. [Motion, Exhibit R; Opposition, p. 26.] He made the decision to terminate Mr. Cobb after reviewing the investigation

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<sup>5</sup> Mr. Cobb argues that there is no evidence that Mr. Yunk ever worked for FedEx Office, or that InTouch (the company that hosts and maintains FedEx's alert line) can identify who made the alert line call. He is incorrect. Mr. Yunk's answers to Mr. Cobb's interrogatories establish both of those facts, and Mr. Cobb has produced no contrary evidence.

<sup>6</sup> Mr. Cobb argues that Mr. Yunk was aware that his mother had been to the Lakeland FedEx Office location for over five years, knew all the employees, identified herself every time, and filled out her own shipping records. He has provided no evidence to support these allegations; and in any event, even if true, they are immaterial to the resolution of this matter.

<sup>7</sup> Mr. Cobb makes much of the fact that the FCS policy against non-employee use of the employee shipping discount was not effective when he started working at FCS, and that FCS has not shown that employees were notified of it or were told how to access it when it did become effective. He does not deny, however, that he knew of the policy at the time his family members used his employee account. His responses to the questions asked in the October 26, 2009 interview make it clear that he knew that third parties could not use his employee shipping discount unless they were shipping to him.

into the facts surrounding Mr. Cobb's shipping history, a review of FCS's discount shipping policy, and a review of past employee discount shipping violations. [Motion, Exhibits O and P.] Mr. Stewart consulted with Ms. Crockum-King of FCS's human resources department, who ensured that the decision to terminate Mr. Cobb was consistent with FCS policies. [Motion, Exhibit O.] Ms. Crockum-King informed Mr. Stewart that FCS had a "zero tolerance" policy toward misuse of the employee shipping discount. [Motion, Exhibit P.]

### **Conclusions of Law**

As mentioned above, I have determined that there are disputes of material fact over whether Mr. Cobb engaged in protected activity. Thus, for purposes of this Decision and Order, I will assume that he did: he provided his Enterprise Vulnerability Study to his then-director, Michael Rodriguez-Chapman and to Scott Mugno (Managing Director of FedEx Safety) in December of 2006. He sent it by email to Randy DiGirolamo (Senior Manager, FedEx Express Global Operations) on October 31, 2008, and submitted it to unidentified members of FedEx Express' management at a 2007 meeting. He also submitted his "FedEx 2020" document on an unidentified date to Mr. Mugno, who forwarded it to Mr. DiGirolamo on February 3, 2009.<sup>8</sup>

There is no dispute of material fact that Mr. Cobb suffered an unfavorable personnel action when he was terminated on November 13, 2009.

As the complainant in this AIR21 case, Mr. Cobb must show that his protected activity was a contributing factor in the decision to terminate him. *Sewade, supra*, slip op. at 6. The Administrative Review Board has instructed:

A contributing factor is "any factor which, alone or in combination with other factors, tends to affect in any way the outcome of the decision." *Smith v. Duke Energy Carolinas, LLC*, ARB No. 11-003, ALJ No. 2009-ERA-007, slip op. at 4 (ARB June 20, 2012). A complainant need not show that protected activity was the only or most significant reason for the unfavorable personnel action, but rather may prevail by showing that the respondent's "reason, while true, is only one of the reasons for its conduct, another [contributing] factor is the complainant's protected" activity. *Hoffman*,<sup>9</sup> ARB No. 09-021, slip op. at 4. An employee may prove causation through indirect or circumstantial evidence, which requires that each piece of evidence be examined with all the other evidence to determine if it supports or detracts from the employee's claim that his protected activity was a contributing factor. *Bobreski v. J. Givoo Consultants, Inc.*, ARB No. 09-057, ALJ No. 2008-ERA-003, slip op. at 13 (ARB June 24, 2011). Circumstantial evidence may include a wide variety of evidence, such as motive, bias, work pressures, past and current relationships of the involved parties, animus, temporal proximity, pretext, shifting explanations, and material changes in employer practices, among other types of evidence.

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<sup>8</sup> Mr. Cobb has not suggested how the concerns raised in "FedEx 2020" implicate aviation safety, but again for purposes of this Decision and Order I will assume that they do.

<sup>9</sup> *Hoffman v. NetJets Aviation, Inc.*, ARB No. 09-021, ALJ No. 2007-AIR-007 (ARB Mar. 24, 2011).

*Benjamin v. CitationShares Management, LLC*, ARB No. 12-029, ALJ No. 2010-AIR-021, slip op. at 11-12 (ARB Nov. 5, 2013). In this case, Mr. Cobb has identified the following people as having received his Enterprise Vulnerability Study and “FedEx 2020”: Michael Rodriguez-Chapman, Scott Mugno, and Randy DiGirolamo. He also provided the Enterprise Vulnerability Study to several unnamed members of FedEx management in 2007. Mr. Cobb has failed to show, however, that any of those individuals played any role in the decision to terminate him. The only two people involved in the termination decision, according to the evidence of record, were Ms. Crockum-King and Mr. Stewart. There is no evidence that Mr. Rodriguez, Mr. Mugno, or Mr. DiGirolamo communicated with either Ms. Crockum-King or Mr. Stewart regarding Mr. Cobb before Mr. Stewart made the decision to terminate him. There is no evidence that any of the unnamed FedEx management officials to whom Mr. Cobb provided the Enterprise Vulnerability Study in 2007 communicated with either Ms. Crockum-King or Mr. Stewart before the termination decision was made. Further, Mr. Mugno and Mr. DiGirolamo were employed by entities other than FCS and had no responsibility for managing Mr. Cobb. Although Mr. Rodriguez was Mr. Cobb’s manager at the time he prepared the Enterprise Vulnerability Study, he was no longer in that position at the time Mr. Cobb was terminated – Mr. Stewart was – and there is no evidence that Mr. Rodriguez was consulted or had input into the termination decision.

Neither Ms. Crockum-King nor Mr. Stewart had any knowledge of Mr. Cobb’s safety concerns at the time they consulted about his termination. Mr. Stewart made his decision after reviewing the results of the investigation into the misuse of Mr. Cobb’s employee shipping discount by his family members, and without regard to any safety concerns. Mr. Cobb argues that the “zero tolerance policy” for such misuse was non-existent because Ms. Crockum-King could not remember who told her that there was such a policy. That argument misses the mark: the issue in this AIR21 case is not whether Mr. Cobb’s termination was fair, but whether it was because he engaged in protected activity. The evidence of record shows that Ms. Crockum-King and Mr. Stewart were unaware of his protected activity when the decision to terminate him was made.

Addressing the “contributing factor” element in his opposition, Mr. Cobb merely recites the facts that Mr. Mugno and Mr. DiGirolamo received the Enterprise Vulnerability Study and “FedEx 2020,” in which he expressed concerns about runway safety as well as the possibility of IEDs and biological weapons. He has made no argument, and presented no evidence, that either of them was involved in the decision to terminate him. He has made no argument at all on this issue; however, on the assumption that he intended to show temporal proximity between his protected activity and his termination, he has failed to do so. Neither Mr. Mugno nor Mr. DiGirolamo worked for FCS, so his actual employer was not informed of his protected activity.

Furthermore, any inference permitted by temporal proximity between protected activity and adverse personnel action may be cut off by intervening events. In this case, the intervening events consisted of an alert line report that Mr. Cobb’s employee shipping account was being misused, the investigation, and his admission that he allowed his family members to use his discount. These intervening events break any inference of causation based on temporal proximity. *See Abbs v. Con-Way Freight, Inc.*, ARB No. 12-016, ALJ No. 2007-STA-037, slip op. at 6 (ARB Oct. 17, 2012); *see generally Negron v. Vieques Air Link, Inc.*, ARB No. 04-021, ALJ No. 2003-AIR-010, slip op. at 8 (ARB Dec. 30, 2004), *aff’d Vieques Air Link, Inc. v. U.S.*

*Dept. of Labor*, 437 F.3d 102, 109 (1st Cir. 2006); *Robinson v. Northwest Airlines, Inc.*, ARB No. 04-041, ALJ No. 2003-AIR-022, slip op. at 9 (ARB Nov. 30, 2005).

Mr. Cobb has pointed to no other circumstantial evidence that would serve to show that his protected activity was a contributing factor in the decision to terminate him. He has not shown the existence of any motive to discriminate against him; indeed, his own opposition brief demonstrates that his concerns were taken seriously by the airport authority and treated respectfully by Mr. Mugno and Mr. DiGirolamo. He has demonstrated no bias, work pressures, past or current relationships of the involved parties, animus, pretext, or shifting explanations for his termination. Although he has suggested that other individuals were treated differently from him after their misuse of the employee shipping discount was discovered, he has provided no evidence of such disparate treatment.

### **Conclusion**

For the foregoing reasons, I find and conclude that there is no dispute of material fact that Mr. Cobb's protected activities were not a contributing factor in the decision to terminate him.

### **ORDER**

For the reasons set forth above, IT IS ORDERED:

1. Respondent FedEx Corporate Services' motion for summary decision is GRANTED;
2. The hearing scheduled to begin on February 8, 2016 is CANCELED; and
3. The complaint in this matter is DISMISSED.

**SO ORDERED.**

PAUL C. JOHNSON, JR.  
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 ten (10) business days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status

of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: [Boards-EFSR-Help@dol.gov](mailto:Boards-EFSR-Help@dol.gov)

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. § 1979.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. See 29 C.F.R. § 1979.110(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, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. See 29 C.F.R. § 1979.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within

such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

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. § 1979.110. 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. §§ 1979.109(c) and 1979.110(a) and (b).