U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 06 November 2014

CASE NO: 2013-AIR-00008

In the Matter of:

ARNOLD A. MCALLISTER,
Complainant,

v.

LEE COUNTY BOARD OF COUNTY COMMISSIONERS,
Respondent.

ORDER ON REMAND DISMISSING COMPLAINT

This matter arises under the employee protection provisions of the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century ("AIR21" or "the Act"), 49 U.S.C. § 42121 et seq. and its implementing regulations found at 29 C.F.R. § 1979.

On April 23, 2013, I issued an Order to Show Cause, requiring the parties to demonstrate why this matter should or should not be dismissed. The parties were asked to address: (1) the timeliness of the complaint; (2) whether Complainant failed to allege that he engaged in protected activity; and (3) whether Respondent is an "air carrier" under the meaning of the Act, specifically whether Respondent is a "citizen of the United States" for purpose of the definition of AIR21. Respondent submitted a timely response to the Order to Show Cause, but Complainant did not. On June 6, 2013, I issued an Order Dismissing Complaint, in which I found that Respondent was not an "air carrier" under AIR 21 because it was not a "citizen of the United States" within the meaning of the statute.

On June 7, 2013, the day after the dismissal order was issued, Complainant's response to my April 23 Order to Show Cause was received at the Office of Administrative Law Judges. Although the response was dated May 30, 2013, the envelope in which it was mailed was postmarked June 1, 2013. Because Complainant's response was received after issuance of the dismissal order, I did not consider it before dismissing the complaint.[1]

By letter dated June 16, 2013, Mr. McAllister appealed my Order Dismissing Complaint to the Administrative Review Board, which accepted his appeal as his opening brief. On July 5, 2013, the ARB issued a Notice of Appeal and Order Establishing Briefing Schedule. Mr.

[1] Mr. McAllister did not move for reconsideration of my dismissal order; however, as he was not at that time represented by counsel, and did follow the appeal instructions at the end of that order, I find his failure to move for reconsideration to be of no moment.

McAllister filed a reply to that Notice and Order on August 8, 2013, in which he included, for the first time in these proceedings, a copy of an air carrier certificate issued to Respondent by the Federal Aviation Administration.[2] Respondent's brief was received at the ARB on August 22, 2013. Mr. McAllister wrote to the ARB by letter received on August 22, 2013, that he had been working out of the country and had not received the July 5 order, and requested that the ARB consider his appeal based on the information he had previously provided. On October 23, 2013, the ARB agreed to do so, and issued an Order Accepting Petition for Review as Opening Brief.

On May 15, 2014, the ARB issued its Decision and Order of Remand[3] vacating my dismissal of the complaint. The Board acknowledged that Mr. McAllister had provided a copy of the air carrier certificate in the course of his appeal, and directed me to re-open the record and admit the certificate as evidence. The Board permitted me, after doing so, to reconsider whether Respondent was an air carrier as defined in AIR21. Additionally, the Board permitted me to obtain additional evidence and briefing on other issues that may be dispositive of this matter.

On June 19, 2014, I issued an Order for Additional Briefing, directing the parties to submit additional briefing and evidence on three issues: (1) whether Mr. McAllister's complaint under AIR21 was timely; (2) whether Respondent is an "air carrier" under AIR21, including whether Respondent is a "citizen of the United States" and whether Respondent engaged in "air transportation"; and (3) whether Complainant engaged in protected activity. Based on Mr. McAllister's submission, I find that he has produced sufficient evidence to show that he engaged in protected activity, and will not dismiss the matter on the grounds that he did not. For the reasons set forth below, however, I find that his complaint was untimely, and that Respondent is not an air carrier under AIR21. Each of those conclusions independently requires dismissal of the complaint.

A. *The Complaint was Untimely*

Complainant worked as a pilot for Respondent's Medstar service until he was terminated in the summer of 2012. He filed his complaint with OSHA on December 13, 2012. Under AIR21 and its implementing regulations, a complaint must be filed no more than 90 days after a retaliatory discharge or discriminatory act occurs. 49 U.S.C. § 42121(b)(1); 29 C.F.R. § 1979.103. Thus, any discriminatory act must have occurred no earlier than September 14, 2012 for his complaint to have been timely.

Mr. McAllister contends that he was terminated on September 3, 2012, and Respondent contends that he was terminated on August 21, 2012. The applicable regulation provides in pertinent part:

> *Time for filing.* Within 90 days after an alleged violation of the Act occurs (i.e., when the discriminatory decision has been both made and communicated to the

[2] Complainant had alleged both in his response to my Order to Show Cause and in his initial appeal to the ARB that Respondent had been issued an air carrier certificate, but had not provided a copy of it. Thus, there was no documentary evidence of the certificate in the record until the case was on appeal.

[3] *McAllister v. Lee County Board of Commissioners*, ARB No. 13-073, ALJ No. 2013-AIR-008 at p. 5 (ARB May 15, 2014).

> complainant), an employee who believes that he or she has been discriminated against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination.

29 C.F.R. § 1979.103(d). The time for filing this complaint started when the decision to terminate Complainant's employment was made and communicated to him. *Ibid.* Here, Respondent elected to cease its Medstar operation and terminate all pilots after being informed of certain regulatory violations by the FAA that respondent could not cure. The letter informing Mr. McAllister that he was terminated was dated August 21, 2012, and informed him that it was effective immediately. Respondent elected to pay him, along with the other pilots, through September 3, 2012 and advised him in detail of his post-employment rights and privileges. The record does not show when he received the letter, but based on his argument, he received it after August 21 and before September 3. Whether Mr. McAllister was terminated on August 21 or September 3, 2012, however, makes no difference; both dates were more than 90 days before he filed his OSHA complaint. His complaint was therefore untimely.

The 90-day period for filing a complaint, however, is not jurisdictional, and is subject to equitable tolling. *See Ferguson v. Boeing Co.*, ARB No. 04-084, ALJ No. 2004-AIR-005, slip op. at 7 n. 44; *see also Halpern v. XL Capital, Ltd.*, ARB No. 04-120, ALJ No. 2004-SOX-00054, slip op. at 4-5 (ARB Aug. 31, 2005). Generally, tolling the statute of limitations is proper: (1) when the defendant has actively misled the plaintiff respecting the cause of action; (2) when the plaintiff has in some extraordinary way been prevented from asserting his rights; (3) where the plaintiff has raised the precise statutory claim in issue but has mistakenly done so in the wrong forum; or (4) the employer's own acts or omissions have lulled the employee into foregoing prompt attempts to vindicate his or her rights. *Barrett v. Shuttle America*, ARB No. 12-075, ALJ No. 2012-AIR-010 slip op. at 4 (ARB Feb. 28, 2014); *Selig v. Aurora Flight Sci.*, ARB No. 10-072, ALJ No. 2010-AIR-010, slip op. at 4 (ARB Jan. 28, 2011); *Hyman v. KD Res.*, ARB No. 09-076, ALJ No. 2010-SOX-020, slip op. at 7-8 (ARB Mar. 31, 2010); *see School District of the City of Allentown*, 657 F.2d 16, 20 (3rd Cir. 1981)(citing *Smith v. American President Lines, Ltd.*, 571 F.2d 102, 109 (2nd Cir. 1978)), *Ferguson, supra*, n. 44. The restrictions on equitable tolling must be scrupulously observed, and its availability is not an open-ended invitation to disregard limitations periods merely because they bar what may otherwise be a meritorious claim. *Doyle v. Alabama Power Co.*, 1987 ERA 53 (Sec'y, Sept. 29, 1989). Complainant bears the burden of establishing grounds for applying equitable modification of the statutory time limitation. *Jones v. First Horizon Nat'l Corp.*, ARB No. 09-005, ALJ No. 2008-SOX-060, slip op. at 5 (ARB Sept. 30, 2010); *see Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 151 (1984).

Mr. McAllister does not claim – and there is no evidence – that he was misled by Respondent respecting any cause of action, or that he was prevented in some extraordinary way from asserting his rights, or that Respondent's actions lulled him into foregoing prompt attempts to vindicate his rights. He bases his claim for equitable tolling solely on the argument that he filed the whistleblower claim at issue here on November 28, 2012, but did so in the wrong forum: he filed with the FAA rather than with OSHA. The record shows otherwise.

On November 28, 2012, Mr. McAllister wrote to Linda Chatman at the FAA requesting that certain records be provided to him under the Freedom of Information Act. That letter is set forth in full as follows:

> Dear Ms. Chatman,
>
> I am writing you today with a FOIA request. Under the Freedom of Information Act, I am requesting all documentation in your files regarding any information pertaining to my employment by Lee County in Fort Myers, Florida. I am only concerned with the time period from Jan 2012 until the present date. The program name is MEDSTAR and our POI was Paul Kahler of the Tampa FSDO.
>
> It is my understanding that a request was made to the Tampa FSDO by Lee County, to investigate an incident in which I was accused of violating several regulations. No certificate action was ever taken against me; in fact I was never notified of any request by Lee County to investigate these allegations and have only recently become aware of this issue. This incidentally was within weeks of me notifying my supervisors that I believed that several violations of regulations had been committed by my immediate supervisor.
>
> I was encouraging Lee County to "self-report" as I was the FAA designated Check Airman and was in no way involved in this issue, but discovered it during my quarterly Check Airman Report. I did in fact notify the FSDO of these possible violations and the POI took immediate action to invalidate at least two check rides that had been performed and were deemed invalid. The training, nor the check rides were administered by me.
>
> Within two weeks of reporting these violations, my supervisor and Lee County had placed me on administrative leave, pending the outcome of an internal investigation of me in an "unrelated matter". I was never told by anyone that the issue was also being addressed to the FAA. I was led to believe that the Human Resources Department of Lee County was investigating my complaints of a hostile work environment. I was misled for three months before I was eliminated/terminated along with the only two remaining pilots at Medstar. It is my contention now, that Lee County has retaliated against me for reporting these violations and I will be seeking protection under the "whistleblower protection act".
>
> I am requesting any and all documentation given or taken by any local, regional or national office including any letters, faxes, emails, recordings, video, audio or any cockpit data recordings, GPS ground tracks, outerlink satellite ground tracks, notes taken by FAA personnel or notes given to the FAA by Lee County that may have been provided as "evidence" against me.
>
> Also, any notes of any telephone contact by Lee County or anyone acting on their behalf in their possible attempt to have action taken against me.

> I greatly appreciate your assistance in these matters and would like any information as well, on how to report this retaliation against me on the part of Lee County.
>
> Sincerely,
>
> Arnold A. McAllister
>
> ATP [redacted by the Administrative Law Judge]
>
> SSN [redacted by the Administrative Law Judge]
>
> Please notify me of receipt of this letter and forward the requested documents, questions, comments, suggestions by any of the contacts below:
>
> Any billing issues please call me. In order to expedite my request as soon as possible.
>
> [contact information redacted by this administrative law judge]

It is clear that Mr. McAllister's November 28, 2012 letter was not a claim of retaliation under AIR21. First, he explicitly styled it as a FOIA request, not as a complaint of retaliation. Second, he said that he "will be seeking" whistleblower protection, not that he was seeking whistleblower protection by that letter. Third, Mr. McAllister explicitly stated that he "would like any information as well, on how to report this retaliation against me on the part of Lee County"; that language demonstrates that he did not consider the letter to be a complaint of retaliation, or even a report of retaliation; it was his clear intent to receive information about how to make a retaliation claim sometime in the future, and he asked the FAA for information on how to do so. Fourth, Ms. Chatman is identified elsewhere in the record as the FAA's FOIA coordinator for the Southern region [Exhibit A-4 to Complainant's response to the Order for Additional Briefing]; she was not an FAA employee charged with responsibility for whistleblower complaints. Fifth, I find that the recitation of alleged retaliatory acts was not a complaint of retaliation, but was nothing more than background information in support of his FOIA request – a request made to support a future claim of retaliation.[4]

In the declaration attached as Exhibit A to his response to my Order for Additional Briefing, Mr. McAllister avers that he filed an online complaint with the FAA on November 28, 2012. *Id.*, ¶ 7. He did not provide either a copy of that complaint or a precise description of it, as required by my Order for Additional Briefing. Consequently, I cannot determine whether that communication, if it was indeed made, constitutes a complaint of retaliation under AIR21. It is as

[4] Furthermore, the letter makes it clear that it was untimely to the extent that Mr. McAllister bases his claim on being placed on administrative leave; he says that he was "misled" about a Human Resources investigation for 2-3 months before being terminated, and he was terminated more than three months before he sent the letter to the FAA. Thus, it was at least five months after he was placed on administrative leave before he told Ms. Chatman of the adverse action.

likely that the communication he claims was made online was identical to his letter of November 28, 2012 as it is that it was something else. It is Complainant's burden to show that he is entitled to equitable tolling, and he has failed to meet it with respect to both the November 28, 2012 letter and the alleged online complaint of the same date.

The November 28, 2012 letter to the FAA was not a complaint of discrimination, but was a request for release of information under FOIA. Mr. McAllister has not shown that the online complaint of the same date, if made, was a complaint of discrimination or was a complaint about some other matter. Mr. McAllister therefore has not met his burden to show that he "raised the precise statutory claim in issue but [] mistakenly [did] so in the wrong forum." His complaint was untimely and must be dismissed.

B. *Respondent is Not an "Air Carrier"*

The Act prohibits an "air carrier" from discharging or otherwise discriminating against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) engaged in protected activities. 49 U.S.C. § 42121(a). An "air carrier" is defined as "a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation." 49 U.S.C. § 40102(a)(2); 29 C.F.R. § 1979.101. To qualify as an "air carrier" under AIR21, then, Respondent must both (1) be a "citizen of the United States" as defined in the statute, and (2) undertake to provide "air transportation."

A "citizen of the United States" is defined as:

(A) **A**n individual who is a citizen of the United States;
(B) A partnership each of whose partners is an individual who is a citizen of the United States; or
(C) A corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

49 U.S.C. § 40102(a)(15).

1. Respondent is Not a Citizen of the United States

Florida counties are political subdivisions of the state. Art. VIII, § 1(a), Fla. Const. Lee County's boundaries were established in § 7.36, Fla. Stat. (2012). The powers and duties of the Lee County Board of County Commissioners, Respondent in this matter, are established under state law at § 125.01, Fla. Stat. (2012). As the governing body of Lee County, the board of county commissioners clearly is not an individual who is a citizen of the United States; nor is it a partnership with partners who are citizens of the United States. Further, although Respondent was established under the laws of the state of Florida, it is not a corporation or association

organized under state law: laws related to organization of corporations and associations are set forth in Title XXXVI, Fla. Stat. rather than Title XI (concerning county formation and powers). Title XI has nothing to do with corporate organization.

Complainant argues that Supreme Court case law establishes that political subdivisions of a state are citizens of the state, and from that premise concludes that Respondent is a citizen of the United States. The cases cited, however, all address the question whether political subdivisions of a state are "citizens of another state" for purposes of diversity jurisdiction in the federal courts. *See Illinois v. City of Milwaukee*, 406 U.S. 91, 97 (1972) ("It is well-settled that, *for the purposes of diversity of citizenship*,[5] political subdivisions are citizens of their respective States") (emphasis added); *Bullard v City of Cisco*, 290 U.S. 179, 187 (1933); *Loeb v. Columbia Township Trustees*, 179 U.S. 472, 485-486 (1900); *Chicot County v. Sherwood*, 148 U.S. 529, 533-534 (1893); *Lincoln County v. Luning*, 133 U.S. 529, 531 (1890); *Cowles v. Mercer County*, 7 Wall. 118, 122 (1869). This tribunal is not an Article III court, and jurisdiction before me is not at issue; and even if it were, diversity of parties does not form part of OALJ jurisdiction. Instead, the present issue is whether, as a matter of statutory interpretation, Lee County Board of County Commissioners is a "citizen of the United States" as defined in the U.S. Code. That phrase is not identical to, and indeed has nothing to do with, whether Respondent is a citizen of Florida for purposes of federal-court jurisdiction. For the reasons set forth in the previous paragraph, I find that Respondent is not a "citizen of the United States" within the meaning of AIR21.

2. Respondent Did Not Undertake to Provide "Air Transportation"

As discussed above, an "air carrier" is a citizen of the United States who undertakes, directly or indirectly, to provide air transportation. Air transportation, in turn, is defined as "foreign air transportation, interstate air transportation, or the transportation of mail by aircraft." 49 U.S.C. § 40102(5). The U.S. Code provides definitions of foreign air transportation and interstate air transportation:

> "[F]oreign air transportation" means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft. [49 U.S.C. § 40102(23).]
>
> "[I]nterstate air transportation" means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—
>
> (A) between a place in—
>
> (i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;
> (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

[5] Complainant, significantly, replaced the italicized portion of this quote with an ellipsis in his brief.

(iii) the District of Columbia and another place in the District of Columbia; or

(iv) a territory or possession of the United States and another place in the same territory or possession; and

(B) when any part of the transportation is by aircraft. [49 U.S.C. § 40102(25).]

The evidence persuades me that Respondent's Medstar operation operated solely within Lee County, Florida. [Affidavit of Holly Schwartz[6], Exhibit B to Respondent's Response to Order for Additional Briefing, ¶ 4]. Respondent's operation therefore did not constitute foreign or interstate air transportation. Likewise, there is no allegation or evidence that Respondent transported mail.

Complainant argues that Respondent is a "common carrier" because it provided services for compensation for anyone who asked for it. There is some evidence that Complainant is correct in that regard; however, whether Respondent is a common carrier is relevant only if it operated across state or international borders. It did not. Thus, I conclude that Respondent did not undertake to provide air transportation services.

3. The FAA's Issuance of an Air Carrier Certificate Does Not Change the Result

Complainant has submitted a copy of an air carrier certificate issued to Respondent on April 20, 2005 and reissued on December 29, 2009, purportedly under Part 135, and purportedly for its Medstar operation. The certificate, found in Complainant's submission of July 21, 2014 as Exhibit A-2, states:

This Certifies That

LEE COUNTY HELICOPTER OPERATIONS
2390 NORTH AIRPORT ROAD
FORT MYERS, FLORIDA 33907

has met the requirements of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and standards prescribed thereunder for the issuance of this certificate and is hereby authorized to operate as an air carrier and conduct common carriage operations in accordance with said Act and the rules, regulations, and standards prescribed thereunder and the terms, conditions, and limitations contained in the approved operations specifications.

This certificate is not transferable and, unless sooner surrendered, suspended, or revoked, shall continue in effect indefinitely.

The parties refer to this certificate as a "Part 135" certificate, apparently after the provisions of 14 C.F.R. Part 135, which establishes rules for all persons holding or required to hold an air carrier certificate under Part 119 of the regulations. Part 119 provides, in applicable

[6] Incorrectly titled "Affidavit of Scott Tuttle" for unknown reasons.

part, that it applies to "each person operating or intending to operate civil aircraft" as an air carrier or commercial operator, or both, in air commerce. 14 C.F.R. § 119.1(a)(1). Complainant argues, in circular fashion, that Respondent is an air carrier because it has an air carrier certificate, which is applicable to air carriers. I am not persuaded.

It is puzzling, due to a lack of evidence, why the FAA issued an air carrier certificate to Respondent, in light of its failure to meet the statutory definition of "air carrier." I do not know what Respondent represented in its application to FAA, or whether it intended at some point to operate across state or international borders; however, under relevant case law, I do not need to know. Whether a provider of air services is an air carrier is dependent on how it actually operates, not on whether it possesses an air carrier certificate. Thus, in *Med-Trans Corp. v. Benton*, 581 F.Supp.2d 721 (E.D.N.C. 2008), the Court held that a provider of air ambulance services was an air carrier based on (1) its provision of interstate air transportation between North Carolina and South Carolina, and (2) its Part 135 certificate authorized it to operate in "[t]he 48 contiguous United States and the District of Columbia." *Id.* Likewise, in *SeaAir NY, Inc. v. City of New York*, 250 F.3d 183 (2d Cir. 2001), the Court held that a tourist seaplane operation was not an air carrier under federal law because it did not engage in interstate transportation of passengers when it flew from New York into New Jersey airspace, but landed back in New York. *Id.* at 186. In the instant case, unlike *Med-Trans, supra*, Respondent did not operate across state lines, and its air carrier certificate did not contain the language permitting operations in the 48 contiguous states and the District of Columbia. Like *SeaAir NY, Inc., supra*, Respondent operated only intrastate.

Complainant cites *Valdivieso v. Atlas Air, Inc.*, 305 F.3d 1283 (11th Cir. 2002) for the proposition that an air carrier certificate is determinative of air-carrier status. He over-reads the *Valdivieso* holding. There, the issue was whether Atlas Air was a common carrier within the meaning of the Fair Labor Standards Act, and therefore exempt from paying overtime to its employees. The issue was not whether Atlas Air was an air carrier under Title 49 of the U.S. Code. The Court observed as a secondary basis for its holding that Atlas Air was a common carrier that it was "licensed" to operate as a common carrier by the Department of Transportation. The Court did not use the word "certificate" in its opinion, and it is unclear what it meant by a "license." I give little weight to *Valdivieso* in interpreting the statutory definition of air carrier under AIR21.

Based on the foregoing, I conclude that Respondent was not an "air carrier" within the meaning of AIR21.

C. *Conclusion*

For two separate and independent reasons, the complaint must be dismissed.

First, I conclude that Complainant's complaint was untimely filed, and that he is not entitled to invoke equitable tolling. His complaint must therefore be dismissed.

Second, I conclude that Respondent is not a "citizen of the United States" and did not undertake, directly or indirectly, to provide "air transportation." Respondent is therefore not an

"air carrier" within the meaning of AIR21, and cannot be found liable for any violation of the employee-protection provisions of the Act. The complaint must therefore be dismissed.

ORDER

For the reasons set forth above, the complaint of Arnold McAllister under the Act is DISMISSED.

SO ORDERED.

Digitally signed by Paul Johnson Jr
DN: CN=Paul Johnson Jr,
OU=Administrative Law Judge, O=Office
of Administrative Law Judges,
L=Newport News, S=VA, C=US
Location: Newport News VA

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. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; 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). In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov. 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).

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: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) 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.

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: (1) 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 (2) 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, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

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 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).