



Issue Date: 07 August 2018

IN THE MATTER OF:

CATE JENKINS, Ph.D.  
*Complainant,*

v.

U.S. ENVIRONMENTAL  
PROTECTION AGENCY,  
*Respondent.*

CASE NO.: 2011-CAA-3

**DECISION AND ORDER ON REMAND GRANTING PARTIAL RECONSIDERATION  
OF SUPPLEMENTAL DECISION AND ORDER AWARDING REDUCED  
ATTORNEY'S FEES AND COSTS AND DENYING COMPENSATORY DAMAGES**

**Background and Procedural History**

The merits of the underlying claim<sup>1</sup> in this matter were resolved in favor of Dr. Cate Jenkins, Ph.D. ("Complainant") by *Recommended Decision and Order of Default Judgement* of Administrative Law Judge Linda S. Chapman,<sup>2</sup> issued on April 15, 2015.<sup>3</sup> In her order, Judge Chapman gave Complainant 30 days to submit a fully supported application for attorney's fees

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<sup>1</sup> In a complaint filed with the Occupational Safety and Health Administration ("OSHA") on January 31, 2011, Complainant alleged her former employer, the Environmental Protection Agency, unlawfully terminated her in retaliation for disclosures protected under a number of environmental whistleblower protection statutes. OSHA dismissed her complaint, finding it had not been timely filed. Complainant subsequently requested a hearing before the Office of Administrative Law Judges.

<sup>2</sup> Judge Chapman has retired from active service with the Office of Administrative Law Judges, resulting in the undersigned's review and decision regarding the Fee Petition and related pleadings in my capacity as the Chief Administrative Law Judge for the Department of Labor, Office of Administrative Law Judges ("Office").

<sup>3</sup> Respondent filed a petition for review of the merits of Judge Chapman's April 15, 2015 Decision and Order with the Department of Labor's Administrative Review Board ("ARB"), which denied the appeal and affirmed Judge Chapman's Order on March 1, 2018.

and costs.<sup>4 5</sup> On May 19, 2015, Paula Dinerstein (“Dinerstein”) of Public Employees for Environmental Responsibility (“PEER”) and Mick Harrison (“Harrison”), Complainant’s co-counsel, filed with this Office a *Petition for Attorney Fees and Costs* (“Fee Petition”), seeking attorney’s fees in the amount of \$664,745.95,<sup>6</sup> consisting of 395.4 hours expended by Harrison and 161.5 hours expended by two paralegals with GreenFire Consulting, LLC working for him; 485.7 hours expended by Dinerstein and 195.25 hours expended by Kathryn Douglass and 19.5 hours expended by Laura Dumais, both PEER attorneys; and \$20,417.94 in costs. Included in the Fee Petition were declarations of Cate Jenkins, Dinerstein, and Harrison; timesheets; expense sheets; a copy of the Laffey Matrix for 2014-2015; and a copy of the Survey of Law Firm Economics for 2014-2015. Harrison and Dinerstein also filed a *Motion for an Award of Compensatory Damages* (“Motion for Compensatory Damages”), requesting \$300,000.00 in damages for “harm to [Complainant’s] career and reputation and emotional distress.” (Motion for Compensatory Damages at 1-2.)

On June 5, 2015, Respondent filed a *Response to Complainant’s Attorney Fee Petition and Motion for Compensatory Damages* (“Response”). On June 9, 2015, Harrison and Dinerstein filed a *Motion for Leave to File Reply to EPA’s Response to Her Petition for Attorney Fees and Costs* and a *Reply to EPA’s Response to Her Petition for Attorney Fees and Costs* (“Reply”).

On December 7, 2015, I issued a *Supplemental Decision and Order Awarding Reduced Attorney’s Fees and Costs and Denying Compensatory Damages* (“Supplemental Decision and Order”). The Order awarded attorney’s fees totaling \$333,002.64 (\$166,355.95 for Ms. Dinerstein; \$127,346.05 for Mr. Harrison; \$21,877.63 for Ms. Douglass; and \$3,480.75 for Ms. Dumais), including paralegal fees totaling \$13,942.26 (\$4,248.13 for Ms. Glaser and \$9,694.13 for Ms. Moskowitz), and costs to Mr. Harrison totaling \$700.00, subject to the final disposition of any appeals of the underlying complaint. I denied Complainant’s fee enhancement requests, finding, in part, that she prevailed primarily as a result of Respondent’s failures and not through her counsel’s efforts. I also denied Complainant’s request for compensatory damages.

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<sup>4</sup> A complainant’s counsel is generally entitled to attorney’s fees paid by respondent when a complainant is successful in a claim under the employee protection provisions of federal environmental statutes. See 42 U.S.C. §§ 6971(c), 7622(b)(2)(B), 9610(c), 29 C.F.R. § 24.109(d)(1). The ERA provides that where the complainant prevails, “the Secretary, at the request of the complainant shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney’s and expert witness fees) reasonably incurred . . . .” 42 U.S.C. § 5851(b)(2)(B) (emphasis added). The Supreme Court specifically noted in *City of Burlington v. Dague*, 112 S.Ct 2638 (1992) that “our case law construing what is a ‘reasonable’ fee applies uniformly to all [federal fee shifting statutes].” *Id.* at 2641. *City of Burlington* should be applied to the attorney’s fees authorization of the employee protection provision of the ERA. Hence, the complainant’s attorney in the instant case was not entitled to a fee enhancement above the “lodestar” figure. *Lederhaus v. Paschen & Midwest Inspection Service, Ltd.*, 91-ERA-13 (Sec’y Jan. 13, 1993).

<sup>5</sup> Complainant was previously reinstated with full back pay and benefits pursuant to an Order by the U.S. Merit Systems Protection Board on the grounds that Respondent had violated Complainant’s due process rights by (i) denying her notice of specific information considered in her dismissal; (ii) denying her a full opportunity to present evidence regarding her affirmative defenses, including her claims of whistleblower retaliation; and (iii) limiting her attempts at discovery and requests for witnesses. 2012 MSPB 70 (May 4, 2012).

<sup>6</sup> Complainant’s request was based on a 10% enhancement and the 2014 Survey of Law Firm Economics. Alternatively, Complainant requested \$590,841.05 based on the Laffey Matrix with a 10% enhancement.

On December 8, 2015, Complainant filed a petition for review with the Administrative Review Board (“ARB”) appealing my Supplemental Decision and Order.

On December 21, 2015, while this appeal was pending before the ARB, Complainant filed *Complainant Dr. Cate Jenkins’ Motion for Reconsideration of “Supplemental Decision and Order Awarding Reduced Attorneys’ Fees and Costs and Denying Compensatory Damages”* (“Motion”). In her motion, Complainant requested reconsideration of (i) “[c]rediting of 50% of Mr. Harrison’s time on the motion for sanctions”; (ii) the crediting of 70% of the remaining hours across-the-board; (iii) “[f]ailing to award fees based on the year of the award instead of the year of the work”; (iv) “[d]educting paralegal time spent . . . doing internet search concerning Dr. Jenkins’ whistleblower activities (1.5 hours) and downloading and organizing cases from various sources (11.25 hours)”; (v) “[d]enying expenses, including Mr. Harrison’s hotel and per diem expenses for the hearing (\$440), and PEER’s expenses for hearing transcript costs and outside copying of hearing exhibits (\$9,953.54), and Dr. Jenkins’ expenses (\$7,195.46)”; and (vi) denying compensatory damages. (Motion at 1-2.) Respondent did not file a response to Complainant’s Motion.

I was unaware that Complainant had filed or that the ARB accepted Complainant’s petition of my December 7, 2015 Supplemental Decision and Order on December 30, 2015 and, on March 2, 2016, while my Supplemental Decision and Order was pending before the ARB, I issued an *Order Granting Partial Reconsideration of Supplemental Decision and Order Awarding Reduced Attorney’s Fees and Costs and Denying Compensatory Damages* (“Order Granting Partial Reconsideration”).

On March 16, 2016, Complainant filed a petition for review with the ARB of my March 2, 2016 Order Granting Partial Reconsideration. On March 6, 2018, the ARB issued a *Decision and Order of Remand*, finding that, as Complainant had timely filed a petition for review of my December 7, 2015 Supplemental Decision and Order, I did not have jurisdiction over the case when I issued my March 2, 2016 Order Granting Partial Reconsideration. Accordingly, the ARB remanded the matter “to permit the ALJ to properly consider the December 21, 2015 motion for reconsideration.” The case file was received by this office on May 17, 2018.

After a May 31, 2018, telephone conference with counsel, on June 1, 2018, I issued *Order Providing for Supplemental Briefing*. Respondent and Complainant both filed supplemental briefs on July 2, 2018 and responses on July 16 and 17, 2018, respectively. I have now properly considered Complainant’s December 21, 2015 motion for reconsideration, and grant partial relief.

### **Standard of Review**

The Administrative Review Board has found that an adjudicative body generally has inherent jurisdiction to reconsider its decisions. *Henrich v. Ecolabs*, ARB Case No. 05-030 (May 30, 2007) (Sarbanes-Oxley Act). According to the Board, jurisdictional authority for reconsideration exists so long as the statute at issue and its implementing regulations do not limit jurisdiction, and so long as reconsideration would not “interfere with, delay or otherwise

adversely affect accomplishment of the Act's . . . purposes and goals.'" *Id.*, quoting *Macktal v. Brown & Root, Inc.*, ARB Case Nos. 98-112 and 122A (November 20, 1998). I find nothing in the relevant statutes or implementing regulations that would preclude reconsideration here.<sup>7</sup>

## Discussion

### Reduction of Hours

Complainant's counsel states that "the proper procedure would have been to have relied on the decision of Respondent EPA to not object to Complainant's counsels' requested hours, which was tantamount to a stipulation to those hours." (Motion at 9.) I disagree. The administrative law judge may only award reasonable fees, even in unopposed fee petitions. Moreover, Complainant's Fee Petition was not unopposed; Respondent filed a brief in opposition.

Complainant's counsel states that this reduction in hours "has not taken into account that all of the work done contributed to the unusual degree of success achieved by Complainant's counsel." (Motion at 13.) As stated in my December 7, 2015 Order:

Harrison and Dinerstein have not demonstrated that the decision in favor of Complainant was the result of counsel's excellent work. Rather, the favorable outcome for Complainant was mostly the result of the conduct and procrastination of Respondent's counsel during discovery. Judge Chapman's April 15, 2015 Recommended Decision and Order states that "[t]here can be no question that the Respondent failed, and failed miserably, over an extended course of time, in complying with its discovery obligations and in complying with the Court's discovery orders."

(Order at 5.) I reduced the attorney hours in the December 7, 2015 Order after reviewing and considering the entire record. Although a team approach to litigation is perfectly acceptable, unnecessary time expended as a result of duplicative work or excessive conferencing should not be credited. The Fee Petition revealed what appeared to be a pattern of redundant billing. The most obvious instances were struck entirely (e.g., two paralegals billing for dinner meetings without any description; billing for three attorneys and two paralegals to attend the hearing). As explained in the Order, other entries were credited at 70% across-the-board because it was impossible to parse from the entries how much work had been unnecessarily duplicated by

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<sup>7</sup> 29 C.F.R. § 18.93 provides only that "[a] motion for reconsideration of a decision and order must be filed no later than 10 days after service of the decision on the moving party." To the extent that § 18.93 does not dictate the standard for granting a motion for reconsideration, the Federal Rules of Civil Procedure apply. *See* § 18.10(a). Pursuant to Federal Rule of Civil Procedure 59(e), motions for reconsideration can be granted only on the following grounds: (i) to correct manifest errors of law; (ii) to introduce newly discovered or previously unavailable evidence; (iii) to prevent manifest injustice; or (iv) to reflect an intervening change in controlling law. Given the unusual circumstances of the case and the fact that I was not the administrative law judge who issued the decision on the underlying claim, I find that it is appropriate to entertain this motion. However, I find that arguments previously made and rejected warrant abbreviated discussions.

multiple attorneys and paralegals.<sup>8</sup> A string of entries by Mr. Harrison totaling 89.2 hours to draft a Motion for Sanctions also stood out as unreasonable, especially in light of the fact that Ms. Dinerstein also spent a significant amount of time on that task, without any indication of who did what. I credited 50% of Mr. Harrison's hours expended on that task, or 44.6 hours, in addition to Ms. Dinerstein's hours.<sup>9</sup>

However, after reconsidering the entire record, I find that crediting 90% of entries across-the-board<sup>10</sup> rather than 70% is reasonable in light of the petitioner's response in the Motion that the work was carefully divided in such a way so as not to cause *complete* duplication of efforts (emphasis added).<sup>11</sup>

#### Awarding Fees Based on the Year the Work was Done Rather than the Year of the Award and the Denial of Interest

In its original Fee Petition, Complainant requested an award based on the year of the award, as well as an award of interest on the fees, both of which were denied in the December 7 Order. Complainant's counsel requests reconsideration of the decision to award fees based on the year the services were performed in order to compensate for the delay in payment. (Motion at 15-17.) Complainant does not request reconsideration of the decision not to award interest on the fees.

As stated in the December 7 Order, Complainant's counsel has been awarded a reasonable fee without basing it on the year of the award or assessing interest.<sup>12</sup>

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<sup>8</sup> The concern both encompasses and goes beyond complete duplication of work and extends to time spent conferencing by a team of six people.

<sup>9</sup> The across-the-board discount rate was also applied to Ms. Dinerstein's hours. However, though Complainant's counsel states that the total approved hours for this brief adds up to only 69.44 hours, (Motion at 5), the number of hours credited appears to be 78.48 (44.60 hours for Mr. Harrison and 33.88 hours for Ms. Dinerstein), although using Complainant's statement that Ms. Dinerstein's timesheet reflected 54.6 hours on the brief, the number would be 82.82 hours ( $0.5(89.2) + 0.7(54.6) = 82.82$ ).

<sup>10</sup> This crediting applies only to the entries previously credited at 70%.

<sup>11</sup> See Motion at 10.

<sup>12</sup> I also note that under the "no interest" rule, interest may not be assessed against an agency of the federal government unless the federal government has explicitly waived its sovereign immunity. Awarding fees at current rates rather than rates at the time the work was performed has been held to be the equivalent. See *Library of Congress v. Shaw*, 478 U.S. 310 (1986) (holding that a 30% increase in the lodestar fee to compensate for the delay in payment violated the "no interest" rule because it was equivalent to awarding interest); see also *Mo. v. Jenkins*, 491 U.S. 274, 283-84 (1989) (discussing *Shaw*). It appears that the federal government has not waived sovereign immunity for interest payments under the environmental whistleblower statutes at issue. See generally Kenneth M. Murchison, *Waivers of Immunity in Federal Environmental Statutes of the Twenty-First Century: Correcting a Confusing Mess*, 32 Wm. & Mary Env'tl. L. & Pol'y Rev. 359 (2008). The ERA provides that where the complainant prevails, "the Secretary, at the request of the complainant shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's and expert witness fees) reasonably incurred . . ." 42 U.S.C. § 5851(b)(2)(B) (emphasis added). The Supreme Court specifically noted in *City of Burlington v. Dague*, 112 S.Ct 2638 (1992) that "our case law construing what is a 'reasonable' fee applies uniformly to all [federal fee shifting statutes]." *Id.* at 2641. As *City of Burlington* should be applied to attorney's

### Paralegal Time Spent Downloading

Complainant requests reconsideration for the denial of time spent compiling and downloading documents. (Motion at 17-18.) I again decline to credit these entries because they are clerical in nature.

### Expenses

#### Mr. Harrison

Complainant requests reconsideration for the denial of Mr. Harrison's per diem request for meals and lodging. (Motion at 19-20.) I again decline to credit these expenses because no receipts are included.

### PEER

The following receipts were submitted:

- Deposition transcripts of Paul Winick and Ken White, job date October 11, 2011, totaling **\$770.60**;
- Deposition transcripts of Wendy Lawrence, James Michael, and Roy Prince, job date October 12, 2011, totaling **\$1,101.70**;
- Deposition transcripts of Stephen Hoffman, Ross Elliot, and Melissa Kaps, job date October 13, 2011, totaling **\$458.20**;
- Deposition transcript of Barry Breen, job date November 10, 2011, total **\$463.00**;
- Deposition transcript of Gregory Helms, job date November 15, 2011, total **\$785.25**;
- Deposition transcript of Paul Winick, job date May 10, 2012, total **\$693.85**;
- Hearing transcripts for April 30, 2012; May 1, 2012; May 2, 2012; and May 3, 2012 totaling **\$4,138.64**;
- Copying receipt from CliCKS, delivered April 25, 2012 for copying, insertion of tabs, and insertion into binders, totaling **\$1,542.30**.

**Total: \$9,953.54**

Although these receipts were available for production at the time of Complainant's Fee Petition, I find that the above associated costs may now be properly awarded in order to prevent manifest injustice.

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fees authorization of the employee protection provision of the ERA, Petitioners here is not entitled to a fee enhancement above the "lodestar" figure. *Lederhaus v. Paschen & Midwest Inspection Service, Ltd.*, 91-ERA-13 (Sec'y Jan. 13, 1993). Regardless, fee enhancements are only warranted when required to ensure that compensation is reasonable. As stated in the December 7 Order, I find Petitioners have obtained a reasonable fee without such enhancement.

Complainant (Motion for Reconsideration, Exhibits B, C)

Complainant asks for reconsideration for requested costs in the amount of \$7,195.46. Complainant provides the following receipts for her previously submitted expenses:

(1) Postage and Delivery

Complainant submits receipts for postage and delivery of items sent to Counsel. I find that those expenses should be credited to Complainant, with the exception of the following two charges for large amounts of stamps with no indication that they were purchased for usage related to this matter.

Date	Amount Disallowed
11/28/2011	\$70.00
6/6/2012	\$55.00

I credit a total of **\$118.06** to Complainant for postage and delivery costs.

(2) Bus Fares and Parking

Complainant requests bus fare and parking for attendance at meetings with counsel, depositions, and the hearing. In her Motion, Complainant provides parking receipts; details the components of the metro/connector bus costs (for which she explained she did not have a receipt); and explains why it was necessary for her to be present at the depositions.<sup>13</sup> I find that these costs are compensable according to the following table:

Date	Amount
4/11/2011; 4/22/2011; 4/26/2011; 10/10/2011; 10/11/2011; 10/12/2011; 10/13/2011; 11/1/2011; 11/15/2011	(\$13.80 per day) \$124.20
4/28/2012	\$7.00
5/10/2012	\$13.80
4/30/2012	\$24.00
5/01/2012	\$17.00
5/02/2012	\$24.00
5/03/2012	\$24.00
	<b>\$234.00</b>

Complainant requests \$12.00 for parking for a meeting on May 15, 2015 and indicates that a receipt is attached. However, it appears that there is no receipt. Accordingly, I do not credit that entry.

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<sup>13</sup> Complainant states that her “presence at the depositions was necessary because the subject matter being addressed concerned events to which I was a party that transpired . . . and I had the historical knowledge of these events and could advise counsel in off-the-record private consultations as to which questions to address as the need arose.” (Motion, Exhibit B at 4.)

(3) Office Supplies and Research; Computer and Internet Usage

Complainant had multiple attorneys from two different firms representing her in this case. These costs are part of an attorney's overhead and should not have been assumed by Complainant. *See Charvat v. Eastern Ohio Regional Wastewater Authority*, 96-ERA-037, 1999 DOL Ad. Rev. Bd. LEXIS 9, \*24-25 (ALJ March 3, 1999) (disallowing the award of costs for office supplies to a complainant who was represented by counsel because the costs represent attorney overhead). Accordingly, these costs are not compensable.

Cate Jenkins' compensable costs total \$352.06 (\$118.06 for delivery expenses and \$234.00 for transportation/parking expenses).

Compensatory Damages

Complainant requests reconsideration of the denial of compensatory damages. Complainant states that testifying "that these circumstances damaged her career and reputation and caused her emotional distress would add little to the basic objective facts supporting her entitlement to damages." (Motion at 21.) Complainant repeats the argument from the Fee Petition that common law standards of defamation should be applied. (Motion at 21-22.) Complainant fails to cite case law to show that this standard has been applied to the statutes at issue.

I again decline to adopt a new standard that presumes the establishment of causation and damages. As stated in the December 7 Order:

Compensatory damages are available under the environmental acts, with the burden on the complainant to "establish[] the causation and the extent of his suffering." *Berkman v. U.S. Coast Guard Academy*, ARB No. 98-056, ALJ Nos. 97-CAA-002, 97-CAA-009, at 29 (ARB Feb. 29, 2000). *See also Pierce v. U.S. Enrichment Corp.*, ARB Nos. 06-055, 06-058, 06-119, ALJ No. 2004-ERA-001 (ARB Aug. 29, 2008); *Doyle v. Hydro Nuclear Servs.*, ARB Nos. 99-041, 99-042, 00-012, ALJ No. 89-ERA-22, at 13-14 (ARB May 17, 2000) (evaluating a claim for compensatory damages based on evidence, including affidavits and testimony). Although counseling and expert medical testimony may not be necessary to prove compensatory damages, Complainant failed to present any evidence regarding compensatory damages during the hearing. Additionally, although Complainant submitted an affidavit with her Fee Petition and Motion for Compensatory Damages, it did not address the issue of compensatory damages or even affirm that she suffered emotional distress or harm to her reputation. Therefore, Complainant has not met her burden . . . .

(Order at 13.)

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Accordingly, I find that attorney's fees totaling \$428,146.25 (\$213,886.22 for Ms. Dinerstein; \$163,730.64 for Mr. Harrison; \$28,128.38 for Ms. Douglass; \$4,475.25 for Ms. Dumais; paralegal fees of \$5,461.88 for Ms. Glaser; and paralegal fees of \$12,463.88 for Ms. Moskowitz) are reasonable. I find that costs to Mr. Harrison in the amount of \$700.00<sup>14</sup>; to Ms. Dinerstein in the amount of \$9,953.54; and to Ms. Jenkins in the amount of \$352.06 are reasonable.

### **ORDER**

Accordingly, Complainant's Motion for Reconsideration is hereby GRANTED, in part. The Court's December 7, 2015 *Supplemental Decision and Order Awarding Reduced Attorney's Fees and Costs and Denying Compensatory Damages* regarding fees and costs is hereby modified as follows:

1. Respondent is ordered to pay PEER **\$256,443.39** (\$246,489.85 in fees; \$9,953.54 in costs).
2. Respondent is ordered to pay Mr. Mick Harrison, Esq. **\$182,356.40** (\$181,656.40 in fees; \$700.00 in costs).
3. Respondent is ordered to pay Dr. Cate Jenkins **\$352.06** for costs associated with this litigation.

**SO ORDERED:**

STEPHEN R. HENLEY  
Chief Administrative Law Judge

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<sup>14</sup> Mr. Harrison's credited costs are unchanged from the December 7, 2015 Order.

**NOTICE OF APPEAL RIGHTS:** This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board (“the Board”) within 10 business days of the date of this 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

The date of the postmark, facsimile transmittal, or e-filing will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

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 a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. *See* 29 C.F.R. §§ 24.109(e) and 24.110.