



Issue Date: 11 February 2016

In the Matter of
BRENT DAVID GOLUB
Complainant

v.

Case No **2015-CPS-00001**

F&E WORLDWIDE, INC.
Respondent

Leslie Holland, Esquire

For Complainant

Marc Rosenthal, Esquire, Casey Cummings, Esquire and Adam Kenner, Esquire

For Respondent/ Employer

DECISION AND ORDER

DISMISSAL OF CLAIM

This case was heard on December 8, 2015 in Miami, Florida under the under the employee whistleblower provisions of the Consumer Product Safety Improvement Act (“CPSIA”), 15 U.S.C. § 2087, and its implementing regulations of the Secretary of Labor published at 29 C.F.R. Part 1983. At that time, I admitted Complainant’s exhibits two to thirteen (“CX” 1 – CX 13) and Respondent/ Employer’s exhibits one through five (RX” 1 – RX 5). See Transcript (“TR”) at 201-202. Complainant filed some documents which I mark as CX 14 and enter as a composite exhibit as there is no objection.

Brent David Golub and his wife, Natalia Marie Golub testified for Complainant. Joseph Petracco, Gunnar Johansson, Neftali "Khory" Scott, Frank LaRuffa, and Evan Lefferts testified for Respondent/ Employer. Complainant offered rebuttal.

LAW AND REGULATIONS

When the Consumer Product Safety Act (“CPA”), 15 U.S.C.A. § 2051 was amended by the CPSIA, Congress expressed legislative intent that “an unacceptable number of consumer products which present unreasonable risks of injury are distributed in commerce” and that “the public should be protected from these unreasonable risks.” 15 U.S.C.A. § 2051(a)(1), (2). The whistleblower protection provisions of 15 U.S.C. § 2087 of the CPSIA in part, state:

(a) No manufacturer, private labeler, distributor, or retailer, may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee, whether at the employee’s initiative or in the ordinary course of employee’s duties (or any person acting pursuant to a request of the employee)

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- (1) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this chapter¹ or any other Act enforced by the Commission,² or any order, rule, regulation, standard, or ban under any such Acts;³
 - (2) testified or is about to testify in a proceeding concerning such violation;
 - (3) assisted or participated or is about to assist or participate in such a proceeding; or,
 - (4) objected to, or refused to participate in any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this chapter or any other Act enforced by the Commission, or any order, rule, regulation, standard, or ban under such Acts.” 29 C.F.R. §§ 1983.102.⁴

In order to establish a prima facie case under the whistleblower provisions of the CPSIA, the Complainant must show, by a preponderance of the evidence when viewed in a light most favorable to him, that:

- (1) he was an employee of a covered respondent at the time of the adverse employment action;
- (2) he engaged in “protected activity” by providing information or a complaint to a covered supervisor or other individual authorized to investigate and correct misconduct where such information or complaint regarded conduct that the complainant reasonably believed constituted a violation of the CPSIA or one of the other statutes enforced by the CPSC;

¹ U.S. Code, Title 15, Chapter 47 (Consumer Product Safety chapter of the Commerce and Trade title).

² Consumer Product Safety Commission, 15 U.S.C. § 2053.

³ See also Regulations, Mandatory Standards and Bans, Consumer Product Safety Commission, available at: <http://www.cpsc.gov/en/Regulations-Laws--Standards/Regulations-Mandatory-Standards-Bans/>.

⁴ One of the CPSA’s express “purposes” is to “protect the public against unreasonable risks of injury associated with consumer products.” 15 U.S.C.A. § 2051(b). The CPSA established a Consumer Product Safety Commission (“CPSC” or the Commission) to regulate and enforce these goals. The CPSA, as amended by the CPSIA, empowers the Commission to enforce the CPSA and the CPSIA, along with any other federal act Congress has added to the Commission’s oversight authority, resulting in a labyrinth of enforcement power. The CPSC also enforces the Children’s Gasoline Burn Prevention Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act, the Refrigerator Safety Act and the Virginia Graeme Baker Pool and Spa Safety Act.

- (3) the covered respondent knew, or suspected, that the complainant engaged in “protected activity”;
- (4) the complainant suffered an “adverse action” at the hands of the covered respondent, such as discharge or another unfavorable personnel action; and
- (5) the circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the adverse action, i.e. a causal connection existed making it likely that the protected activity resulted in the alleged discrimination.

29 C.F.R. § 1983.104(e)(2).

If the Complainant establishes these elements, the Respondent/ Employer may avoid liability if it can prove “by clear and convincing evidence” that it “would have taken the same unfavorable personnel action in the absence of that [protected] behavior.” 49 U.S.C. § 42121(b)(2)(B)(iv); *Brune v. Horizon Air Industries, Inc.*, ARB No. 04-037, ALJ No. 2002-AIR-00008, (ARB January 31, 2006).

FINDINGS OF FACT

Respondent/ Employer is primarily in the business of buying, selling and distributing beauty care products, such as shampoo, conditioners, gels, hairspray and nail polish. The Respondent maintains these products in its warehouse. TR 180 Complainant was the warehouse manager, who reported to Evan Lefferts, the owner. Complainant and Lefferts are first cousins. During the hearing, they repeatedly referred to each other as “my cousin.”

The testimony is conflicted whether Complainant had actually been exposed to the acetone or whether the company has taken adequate precautions to avoid employee exposure.

Respondent/ Employer argues that Complainant was an unruly employee who was fired for insubordination. Respondent/ Employer established, in large part through Complainant’s admissions, that the Complainant had a history of issues with authoritative figures, especially his relatives, and that included Lefferts.

On October 21, 2013, a shipment of approximately 18,000 cans of hairspray was received at the warehouse. Water damaged cans of hairspray were connected by red cardboard in “buy one-get one free” sets. Because of the water penetration, the red coloring of the cardboard bled onto the cans. Complainant alleges that the cleaning agent to be used, acetone, was toxic and was making him sick. Complainant asserts that after assessing the damage, he determined that it was the worst shipment that had ever received. He recommended that Mr. Lefferts return the shipment and not risk selling the hairspray to Walgreens. TR. 31:21-25; 32:1-6. Eventually, he was fired.

In a disputed document, Complainant directs me to email statements of Marlon Holt, a former Respondent/ Employer employee, to the OSHA investigators. Holt did not testify before me, and it is difficult to determine credibility without observing demeanor with this type of testimony:

....Mr. Golub and I have not always set horses but he was terminated during a heated argument over the use of acetone. Franky did stand at the corner of my desk prior to the termination and complain about how sick they all were after work.....

“Franky” is witness Frank LaRuffa, who denied any involvement. TR 78-TR 79.

None of the other employees substantiated that Complainant had anything to do with the acetone.

Marlon Holt added,

Brent and Evan argued over the matter which resulted in Brent being told to leave the premises. Brent left shaken, yelling, ‘I can’t believe he’s sending me home because I don’t want to get sick.....The next day the word was out that Brent was terminated.

CX 3.

COVERED ACTIVITY

There is no dispute that Respondent/ Employer was a “distributor” as set forth in the statute and the regulation. However, Respondent/Employer argues that this case involves the hairspray and not the acetone, and is therefore not covered. Consumer products do not include—

(H) drugs, devices, or cosmetics (as such terms are defined in sections 201(g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C.A. § 321(g), (h), and (i)]).

However, I find that the acetone is a consumer product. Moreover, this Office hears claims of retaliatory employment actions under section 2012 of the Food, Drug, and Cosmetic Act (“FDCA”), added by section 402 of the FDA Food Safety and Modernization Act (“FSMA”), Pub. L. 111-353, and codified at 21 U.S.C. § 399d. That statute also requires an OSHA investigation as a prerequisite to filing a request for hearing. In effect, Respondent/Employer argues that it should be evaluated under the FDCA and FMSA.

Respondent/ Employer did not bring a Motion for Summary Decision on this issue and did not argue lack of jurisdiction during the course of the hearing.

Even if the claim is based on the hairspray product, equity and judicial/administrative economy require that the claim would be evaluated under FDCA/FMSA, which is procedurally the same as the CPSIA.⁵ Both statutes require analysis under 29 C.F.R. Part 1979 (2015), the Air

⁵ In determining whether I should toll a limitations period, see the discussion of equitable modification of statutory time limits in *School Dist. of Allentown v. Marshall*, 657 F.2d 16, 19-21 (3d Cir. 1981). Under the Toxic Substances Control Act, the court articulated three principal situations in which equitable modification may apply: 1. when the defendant has actively misled the plaintiff regarding the cause of action; 2. when the plaintiff has in some extraordinary way been prevented from filing his action; and 3. when “the plaintiff has raised the precise statutory

21 regulations under Department of Labor policy. See Federal Register: Interim Final Rule, 79 *Fed. Reg.* 8619 (Feb. 13, 2014).

PROTECTED ACTIVITY AND KNOWLEDGE

Because this case has been fully tried, there is an inference that a prima facie case has been made. *Kester v. Carolina Power & Light Co.*, ARB No. 02-007, ALJ No. 2000-ERA-031, Slip Op at 5-8 (ARB Sept. 30, 2003). Complainant directs me to email statements of Marlon Holt, a former Respondent/ Employer employee, to the OSHA investigators. Holt did not testify before me, and it is difficult to determine credibility without observing demeanor with this type of testimony. But I find that the statement, combined with the circumstances surrounding the acetone, substantiates that Complainant complained about the use of acetone. Ironically, Respondent/ Employer developed evidence that Holt and Complainant were not friendly – to the extent that they were enemies. I find that these facts support Complainant’s credibility on this issue

The record shows that OSHA issued to Respondent two Citations and Notifications of Penalty, as a result of an October 30, 2014 inspection number 944940:

1. The employer did not base election of appropriate hand protection on an evaluation of the performance characteristics of the hand protection relative to the task to be performed, conditions present, duration of use, and the hazards and potential hazards identified: acetone Respondent was using acetone, a hazardous or potentially hazardous substance; and
2. On or about October 30, 2013, the employer did not have a written hazard communication program while employees used chemicals such as acetone in the workplace.

TR. 196:8-25; 197:1-11; CX 12.⁶ This investigation was nearly contemporaneous with the complaint filed by Complainant. I find that it substantiates Complainant’s credibility on this issue.

Although there was testimony from the other employees that Complainant did no work with acetone, there is no dispute that he purchased it and instructed them to use it.⁷ Although

claim in issue but has done so in the wrong forum.” To successfully invoke the “wrong forum” option, the filing of the claim in the wrong forum must be timely. See also *Turgeon v. The Nordam Group, Inc.*, 2003-AIR-41 (ALJ Oct. 30, 2003); *Ferguson v. Boeing Co.*, 2004-AIR-5 (ALJ Apr. 5, 2004).

Under the FDCA/FMSA, a hearing "is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties." 29 C.F.R. § 1987.107(b). Moreover "[Judges] have broad discretion to limit discovery in order to expedite the hearing." *Id.* The statute states that hearings are to be conducted "expeditiously." The statute also provides that "If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States with jurisdiction...."

⁶ The 2013 date is most probably a scrivener’s error. It was to any reasonable degree of probability, October 30, 2014.

Respondent/ Employer emphasizes that Complainant had already been terminated by the time that the other employees worked with the acetone, I find that this argument is an example of the “pregnant negative,” as it is admission of protected activity.

I also find that the facts show that Respondent/ Employer knew that the acetone was a problem. There is no dispute that Complainant was ordered to buy five gallon tanks of acetone to apply to the hairspray over a two day period. There is also no dispute that Complainant purchased special gloves and rags to perform the task.⁸ I find that Complainant established that the acetone was flammable and that other employees smoked cigarettes in the warehouse. There is no evidence to impeach the testimony that Complainant was sick and not feeling well on the day he bought the acetone and that he placed the company on notice of that fact.

I find that the Complainant was engaged in protective activity and that Respondent/ Employer was aware of that fact.

ADVERSE EMPLOYMENT ACTION

The parties stipulated that Complainant was employed by Respondent/ Employer and that he was fired. TR 17.

I find that Complainant has established an adverse employment action.

CONTRIBUTION

A contributing factor is "any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision." *Williams v. Domino's Pizza*, ARB No. 09-092, ALJ No. 2008-STA-052, slip op at 7 (ARB Jan. 31, 2011) at 5. Complainant can succeed by "providing either direct or indirect proof of contribution." Id. "Direct evidence is 'smoking gun' evidence that conclusively links the protected activity and the adverse action and does not rely upon inference." Id. If Complainant "does not produce direct evidence, he must proceed indirectly, or inferentially, by proving by a preponderance of the evidence that retaliation was the true reason for terminating his employment." Id.

Respondent/ Employer argues that because Complainant did not engage in any protected activity, Respondent did not know of any protected activity, nor could any protected activity have been a contributing factor in Respondent's decision to terminate Complainant. I find otherwise.

Again, the record shows that a violation occurred. CX 12.

⁷ The record shows that on the morning of October 23, 2013, after Mr. Golub directed Joseph Petracco, Neftali “Khory” Scott, and Frank LaRuffa to begin cleaning the cans of hairspray with the acetone, he sat at his desk, approximately three feet from the table at which the cleaning was taking place. Mr. Golub was not feeling well as a result of the exposure to the acetone. TR 37:20-25; 38:1-3

⁸ Respondent/ Employer alleges that the hairspray bottles were not cleaned until after Complainant was fired, but I find that there is no dispute he had purchased the acetone and had arranged for the work before he was fired.

I find that this evidence undermines the testimony of several witnesses, who in essence said that there was no violation regarding acetone.

As a matter of fact, at the time of termination, the cousins admittedly had a discussion about who would administer the acetone. Complainant reportedly suggested that two “inside” workers should help.

Q. [Ms. Holland] Did Brent Golub make any representations as to him [Complainant] being worried about himself or any of the employees about cleaning 18,000 hairspray cans with acetone?

A. [Lefferts] No. It was about the two employees in the office why they weren't coming out to help clean the cans.

TR. 191.

By necessary implication, I find that Lefferts had to have known about the acetone problem.

I find that the controversy over the acetone is a precipitating factor in termination.

SHIFTING BURDEN OF PROOF

To avoid liability Respondent must show “by clear and convincing evidence” that it would have taken the unfavorable personnel action in the absence of protected activity. 49 U.S.C.A. § 42121(b)(2)(B)(iv); *Fleeman v. Nebraska Pork Partners*, ARB Nos. 09-059 & 09-096, ALJ No. 2008-STA-15, at 2, n. 1 (ARB May 28, 2010). “Clear and convincing evidence is evidence indicating that the thing to be proved is highly probable or reasonably certain.” *Clarke*, ARB No. 09-114, slip op. at 4 (internal quotation marks deleted)(citations omitted). See also *DeFrancesco v. Union Railroad Company*, ARB No. 10-114, ALJ No. 2009-FRS-009 (ARB February 29, 2012). The burden of proof under the clear-and-convincing standard is more rigorous than the preponderance-of-the-evidence standard.

The Administrative Review Board has been using the following test: the plain language of the statute requires a case-by-case balancing of three factors:

- (1) How ‘clear’ and ‘convincing’ the independent significance is of the non-protected activity;
- (2) The evidence that proves or disproves whether the employer ‘would have’ taken the same adverse actions; and
- (3) The facts that would change in the ‘absence of’ the protected activity.

Speegle v. Stone & Webster Constr., Inc., ARB No. 13-074, ALJ No. 2005-ERA-006, slip op. at 12 (ARB Apr. 25, 2014) (internal citations omitted). Although Speegle was a nuclear

whistleblower, the standard would be the same.

Here Respondent argues that it has produced clear and convincing evidence that it would have fired Complainant absent protected activity. This factor, if proven, overcomes the fact that an employee's protected activity played a role in the employer's adverse action and relieves the employer of liability.

Ultimately there was a confrontation between the cousins.

Q [by Ms. Holland] Okay, were you terminated because you called your cousin a fat fuck?

A [Complainant] No, I was sent home on Wednesday and then I was terminated Thursday morning and was never given a reason and I was terminated by his partner, Allen Jacobson. I personally believe if it was such a horrible argument or altercation, Mr. Lefferts would have fired me on the spot, but instead he sent me home.

Q Have you ever had any other altercations with any other employees in the warehouse?

A Altercations, no. Arguments, there have been, over 11 years.

TR 86-97.

According to Lefferts:

And if, and then he went off. Went nuts.

Q And what did he say to you?

A It started off first he told me to go fuck myself. Then he said you're a, I'm a fat fuck. Come on, fight me, fight me, fight me. Then he said I dare you fire me. I dare you.

I sat, I sat actually in his chair, at his desk, quietly and all I would say is every once in a while, while he was ranting and raving, Brent [Complainant], just go home for the day. Just go home. And that's just go home. And that's it. And he went on for several minutes.

And finally after the, I wasn't going to get up, wasn't going to do anything, by that time all the, obviously, employees were standing there and eventually he just walked out.

TR 191.

Complainant denies ever having called his cousin a fat fuck. TR 85, TR 92. But a thorough review of the record shows that the heated altercation between him and Lefferts occurred.

Gunnar Johansson testified that he heard Complainant say the words. TR 148.⁹ Neftali "Khory" Scott, who had a checkered history with Complainant established that he was within earshot and said the same. TR 163.

Lefferts alleged that Complainant had acted out approximately 50 times previously, but had not fired him "because he is my cousin and I love him."

But this time, I mean, you're not going to stand there in front of every employee and tell him to go fuck myself and dare you to fire me. So, I thought about it at day, you know, during the day.

And I didn't contact him. He actually called the office the next day and Allen answered the phone, Allen Jacobson, and he talked with Brent. And he had told, and Brent, he had told Brent that he wasn't going to be back working for us.

Q So, the termination on its face had absolutely nothing to do with cleaning bottles with acetone?

A If the cans were never there and I walked out and he started screaming like he did at me, which I won't, he had never done to me in all the years he worked for me, done it to other employees but never to me, he would have been fired for the exact same thing.

TR 192-193.

Respondent/ Employer does not have a policy handbook. Neither party offered evidence of similarly situated employees. I take notice that Florida is an "at will" state: employees work at the pleasure of the boss. Respondent/ Employer argues that termination is certainly a proportional and legitimate response to Complainant's blatant insubordination, personal insults, profanity, and threats of violence. "In sum, Respondent clearly and convincingly establishes that no protected activity occurred and that Respondent would have terminated in the absence of a protected activity because no protected activity did take place and Respondent terminated Complainant because of and only because of insubordination, disrespect, insults, profanity, and threatening violence." See Brief.

Johansson testified that Complainant has a reputation for fighting and was involved in an earlier incident when he threw acetone in an employee's face, "a 19 year old kid that worked in our warehouse." TR 152. Complainant had been fired by Lefferts previously for fighting but had been rehired later. TR 153-154. He had fought with other employees. TR 164, TR 172.

As stated above I had an opportunity to see and question the witnesses. Although I accept that Complainant is generally credible, I find that he appeared to be very emotional. I find that he

⁹ And at that point he was like, fuck that, fuck this, fuck you, you fat fuck. I don't give a, and then he just went on a rampage. Id. ... And just screaming irately I don't fucking care, fuck you, fire me you fat fuck. Fire me you big pussy. I don't care fire me. TR 149.

And then Evan [Lefferts] sat calmly on the computer going Brent, go home, Brent. Brent, go home. That's what he said. And literally it was probably a five minute rant where he just went off. And that point, I've stopped him enough times in the past, I just let it go, decided to let him bury himself and go home. TR 149.

did threaten his cousin, and whether or not he actually used the words "fat fuck," he verbally abused him.

In *Speegle*, the ARB determined that the plain meaning of the phrase "clear and convincing" means that the evidence must be "clear" as well as "convincing." "Clear" evidence means the employer has presented evidence of unambiguous explanations for the adverse actions in question. "Convincing" evidence has been defined as evidence demonstrating that a proposed fact is "highly probable." The burden of proof under the "clear and convincing" standard is more rigorous than the "preponderance of the evidence" standard and denotes a conclusive demonstration, i.e., that the thing to be proved is highly probable or reasonably certain. In *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984), the Supreme Court defined "clear and convincing evidence" as evidence that suggests a fact is "highly probable" and "immediately tilts" the evidentiary scales in one direction.

In addition to the high burden of proof, the express language of the statute requires that the "clear and convincing" evidence prove what the employer "would have done" not simply what it "could have" done.

Speegle stated that it is not enough to show that Complainant's conduct provided a sufficient independent reason to suspend and fire him, but that the employer would have done so in this case solely based on a single outburst in a meeting. There must be evidence in the record that demonstrates in a convincing manner why the employer "would have fired" Complainant, a longtime employee, for a single outburst in a staff meeting. The employer may have direct or circumstantial evidence of what it "would have done."

The last factor, as in *Speegle*, of the "clear and convincing" defense focuses on what would have happened in the "absence of" the protected activity. The Board determined that to properly decide what would have happened in the "absence of" protected activity, one must also consider the facts that would have changed in the absence of the protected activity.

Applying *Speegle*, I find:

- (1) Respondent/Employer produced 'clear' and 'convincing' independent significance of the non-protected activity, i.e. open hostility toward Lefferts constituting insubordination and Complainant has a history of violence and had been fired previously for it;
- (2) Although the evidence proves Respondent/ Employer 'would have' taken the same adverse actions, insubordination, standing alone is a ground for termination.
- (3) Given the insults and the perceived threat of violence, termination would have taken place in the 'absence of' the protected activity.

ORDER

Because Respondent/Employer has proven by clear and convincing evidence that the Complainant's employment would have been terminated despite his protected activity, the claim is **DISMISSED**.

DANIEL F. SOLOMON
ADMINISTRATIVE LAW JUDGE

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) 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

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. § 1983.110(a). Your Petition must specifically identify the findings, conclusions

or orders to which you object. You may be found to have waived any objections you do not raise specifically. See 29 C.F.R. § 1983.110(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, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. See 29 C.F.R. § 1983.110(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. §§ 1983.109(e) and 1983.110(b). 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. § 1983.110(b).

