



Issue Date: 09 December 2015

Case No.: 2014-FRS-00149

In the Matter of:

MARK STALLARD,

Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondent.

**DECISION AND ORDER – GRANTING RESPONDENT’S
MOTION FOR SUMMARY DECISION
AND
ORDER DISMISSING THE COMPLAINT**

This case arises under the employee protection provisions of the Federal Railroad Safety Act, U.S. Code, Title 49, §20109, as amended (“FRSA”), and its implementing regulations at 29 CFR, Part 1982. Per 29 CFR §1982.107, the proceeding will be held in a manner consistent with the procedural rules and evidentiary rules set forth in federal regulations at 29 CFR Part 18. Pursuant to a Notice of Hearing and Scheduling Order, this matter is set for hearing at 9:00 a.m. on Tuesday, December 15, 2015, in Newport News, Virginia.

By letter dated November 4, 2015, Respondent’s counsel filed its Motion For Summary Decision. Respondent argues that complainant did not suffer any adverse employment action and did not meet his prima facie case. Respondent argues that it is “undisputed evidence that Stallard was not terminated or otherwise disciplined in any manner following the actual report of his injury. Rather, Stallard was only scheduled for a formal hearing after Norfolk Southern discovered that his doctor had stated (within days of the injury) that the injury had actually occurred at home. Unable to determine through medical records which version of the facts were true (whether the injury had occurred at work or at home), Stallard was scheduled for a formal hearing to try to ascertain the truth. At the time the decision was made to schedule the formal hearing, the decisionmakers did not know that Stallard’s doctor’s note was in error. When they found out it was, the hearing was canceled. Stallard faces no charges or consequences if he is medically able to return to work in the future.”

Respondent argues that when there is adverse employment action, there must be evidence that “a reasonable employee would have been dissuaded from engaging in protected activity because of the employer’s particular action. No reasonable employee would be dissuaded to report a work-related injury under the unique circumstances of this case-e.g., not report a work injury because the employee is afraid that his doctor may later make an error about where the injury occurred resulting in an investigative hearing being scheduled. Additionally, the FRSA still requires an adverse employment action to be ‘material.’ There is no material adversity where, as here, a hearing is scheduled, then canceled, and no discipline ever takes place or is contemplated to take place in the future. *Brisbois v. Soo Line R. Co.*, 2015 WL 5009048, at *9 (D. Minn. 2015) (declining to find adverse employment action where an employee was only charged but never disciplined because to do so ‘would have major implications for Labor Relations and the rail industry.’).”

Respondent argues that even if there was protected activity, complainant “cannot establish that his protected activity was a ‘contributing factor’ to the adverse employment action. Specifically, an independent event between the protected activity and the adverse employment action breaks the contributing factor chain. Here, Stallard’s doctor’s notes that the injury occurred at home was the independent event. In other words, Stallard was not scheduled for a formal hearing because he reported an injury, it was because of what his doctor reported. An injury report is not a ‘contributing factor’ to an adverse action simply because it is part of the administrative process which resulted in discipline.” *Heim v. BNSF R. co.*, 2015 WL 5775599, at *3 (D. Neb. 2015).

By letter dated November 18, 2015, complainant filed his Memorandum In Opposition To Respondent’s Motion For Summary Decision. Complainant argues that “summary decision can only be granted ‘if the movant shows that there is no genuine dispute as to any material fact’ for a particular claim or defense. 29 CFR 18.72.” Complainant also argues that “the ARB underscores that “[when] reviewing the evidence the parties submitted, the ALJ must view it in the light most favorable to the non-moving party.” *Henderson v. Wheeling and Lake Erie Ry.*, ARB case no. 11-013, ALJ Case no 2010-FRS-012 ARB (October 26, 2012), at pages 7-9, including fn. 24. Complainant argues that there is a genuine dispute of material fact regarding whether complainant was subject to an adverse employment action and that there is a dispute as to whether any protected activity was a “contributing factor” to that adverse action.

Complainant referenced the Parties’ Joint Stipulation of Agreed Facts dated November 13, 2015. In the joint stipulations, the parties agreed that on March 16, 2013, complainant entered the crew room holding the left side of his lower back and limping. Complainant filled out an accident report. Respondent performed a full investigation of the alleged accident following rules and procedures. Complainant sought follow-up medical care for his back injury from his physician, Dr. Mullins, on March 18, 2013. On May 1, 2013, respondent’s claim agent Maher received the medical record from Dr. Mullins dated March 18, 2013. Dr. Mullins stated the complaints of low back pain began 2 days prior and that “the injury occurred at home.” The parties stipulated that claim agent Maher emailed the medical record on May 1, 2013 to complainant’s supervisor Wilson pointing out that the injury “occurred at home” with a “3 inch bruise on the left upper lumbar area.” On March 3, 2013, supervisor Wilson forwarded the email to his supervisor, Greg Comstock. Mr. Wilson and Comstock discussed the March 18, 2013 record and sent it to the respondent’s medical Department to determine through medical records if the injury occurred at

work or home. On May 3, 2013, Mr. Wilson sent an email to Dr. Prible to review but Dr. Prible was on leave. By May 23, 2013, respondent obtained medical records from Norton Community Hospital from March 16, 2013. These records reflect a back injury occurred at work that day. No mention of bruising of the lumbar region was noted as it was in Dr. Mullins medical records. On May 23, 2013, Dr. Mullins faxed to respondent's medical department his revised note and stated that his March 18, 2013 original record was an error. May 23, 2013, was the Thursday before Memorial Day weekend. On May 24, 2013, Mr. Wilson sent another email to Dr. Prible also advising that complainant provided his doctor's report from the date of injury, which had not previously been disclosed due to HIPPA laws. Dr. Prible responded via email that based on the documentation, there was no way to determine whether the injury occurred at home or at work based on conflicting medical records. On May 20, 2013, Ms. Janowiak with the medical Department sent an email to Dr. Prible and Mr. Wilson. The Department received the amended note from Dr. Mullins for review. Dr. Mullins' amended note was not attached and the email did not advise what was in that note. On May 30, 2013, Mr. Wilson sent a letter to complainant advising of a formal investigation regarding conflicting statements for the on-duty injury. It was set for June 6, 2013. Mr. Wilson and Mr. Comstock testified they were unaware as of May 30, 2013 that Dr. Mullins had amended his medical record of March 18, 2013 changing the injury occurred at home to the injury occurred at work.

On June 2, 2013, complainant's union representative requested a postponement of the hearing and it was rescheduled to July 18, 2013 by mutual agreement. On June 4, 2013, Mr. Wilson received an email from Dr. Prible that Dr. Mullins' note stated the injury occurred at work and not at home. On June 4, 2013, Mr. Wilson recommended to Mr. Comstock that they "forego the formal investigation". On June 4, 2013, Mr. Comstock was on vacation. On June 12, 2013, after Mr. Comstock returned from vacation, Mr. Wilson discussed the amended note from Dr. Mullins. They decided not to cancel hearing which had already been postponed. From June 4, 2013 until July 11, 2013, respondent did not indicate to complainant the investigation would be canceled. On July 11, 2013, complainant union representative faxed a letter to Mr. Wilson. He requested an indefinite postponement due to complainant's medical treatment. Mr. Wilson emailed the union representative and stated the investigation is canceled. "We received updated medical reports."

The parties stipulated that "no formal hearing was ever held." The parties stipulated that "there are no charges currently pending against complainant." The parties stipulated "complainant was not suspended, counseled, or reprimanded after his injury on March 16, 2013." The parties stipulated that "the formal hearing is not reflected on complainant's career service record with the respondent." The parties stipulated that "complainant has not been terminated by respondent." The parties stipulated that complainant has not been medically released to return to work. The parties stipulated that "if complainant is medically able to return to work in the future, he would be allowed to do so by respondent." The parties stipulated that "the charge against complainant of making a false and/or conflicting statement is a serious offense that can result in the employee's termination." (Appendix A) Claimant had back surgery in August 20, 2013 and has not returned to employment.

Complainant argues that the Motion for Summary Decision should be denied when the facts are viewed most favorably to the Complainant as the non-moving Party.

STATUTORY FRAMEWORK

Whistleblower Protection under the FRS

To prove unlawful retaliation under the FRS, the Complainant must show by a preponderance of the evidence (1) that he engaged in protected activity, (2) that the employer had knowledge of the protected activity, (3) that he was subjected to an adverse employment action amounting to discharge or discrimination with respect to compensation, terms, conditions, or privileges of employment, and (4) that the protected activity was a contributing factor in the adverse employment action, 49 U.S.C. §20109. *Araujo v. New Jersey Transit Rail Operations, Inc.*, 708 F. 3d 152 (3rd Cir. 2013); *Consolidated Rail Corp. v. U.S. Dept. of Labor*, ___ Fed. Appx. ___, 2014 WL 2198410 (6th Cir. 2014)(unpub) “If the employee does not prove one of these elements, the entire complaint fails.” *Coryell v. Arkansas Energy Services, LLC.*, No. 12-033, 2013 WL 1934004, *3 (ARB Apr. 25, 2013)

Protected activity is a contributing factor if “the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer’s decision.” 75 FR 53522, 53524 (Aug. 31, 2010); *Araujo*, supra at 158; *Hutton v. Union Pacific Railroad Co.*, No. 11-091, 2013 WL 2902810, *6 (ARB May 31, 2013)

The ARB held that the FRSA prohibits employers from discharging, demoting, suspending, threatening discipline, reprimanding or “in any other way discriminating” against an employee who engages in protected activity. *Fricka v. Nat’l R.R. Passenger Corp.*, Dep’t of Labor A.R.B., No. 14-047, issued 11/24/15. The ARB applied a broader standard and held that an adverse action is one that is unfavorable and “more than trivial, either as a single event or in combination with other deliberate employer actions alleged.”

If the Complainant establishes a prima facie case, the Employer is not liable under the FRS if the Employer establishes by “clear and convincing evidence that it would have taken the same adverse action in the absence of any protected activity.” 49 U.S.C. §20109(d)(2)(A)(i); 20 CFR §1982.109(b) “The ‘clear and convincing evidence’ standard is the intermediate burden of proof, in between ‘a preponderance of the evidence’ and ‘proof beyond a reasonable doubt ... to meet this burden, the employer must show that ‘the truth of its factual contentions are highly probable.’” *Araujo*, supra at 159, citing *Addington v. Texas*, 441 U. S. 418 (1979) and *Colorado v. New Mexico*, 467 U. S. 310 (1984)

Standard for Awarding Summary Decision

Summary decision is appropriate in a proceeding before an Administrative Law Judge “if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.” 29 C.F.R. § 18.72; see also *Williams v. Dallas Indep. Sch. Dist.*, No. 12-024, 2012 WL 6849447 (ARB Dec. 28, 2012). “If the complainant fails to establish an element essential to

his case, there can be ‘no genuine issue as to a material fact’ since a complete failure of proof concerning an essential element of the non-moving party’s case necessarily renders all other facts immaterial.” *Coates v. Southeast Milk, Inc.*, No. 05-050, 2007 WL 4107740, *3-4 (ARB Jul. 31, 2007)

When an employer “asserts [in a motion for summary decision in an FRS case] legitimate, non-discriminatory reasons for [the employer’s decision and action], the employee must point to specific evidence that demonstrates a dispute still exists in spite of the respondent’s proffered reasons [for the employer’s decision and action]. Specific evidence means evidence that: (1) the respondent’s reasons are ‘unworthy of credence’ or (2) the protected activity was at least a contributing factor even if the respondent’s reasons are true.” *Hasan v. Enercon Services, Inc.*, No. 10-061, 2011 WL 3307579, *6 (ARB Jul. 28, 2011) If a question still exists as to whether protected activity was or was not one of the reasons for the employer’s conduct, a genuine issue of a material fact exists and the employer’s request for summary decision must be denied.

In evaluating whether the Respondent is entitled to a Summary Decision, all facts and reasonable inferences therefrom are considered in the light most favorable to the non-moving Complainant. *Araujo*, supra at 156; *Battle v. Seibles Bruce Ins. Co.*, 288 F.3d 596 (4th Cir. 2002) citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986) “However, even when all evidence is viewed in the light most favorable to the nonmoving party, the non-moving party cannot defeat a properly supported summary judgment motion without presenting ‘significant probative evidence.’” *Pueschel v. Peters*, 340 Fed. Appx 858, 860 (4th Cir. 2009), unpub, citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986) When the information submitted for consideration with a Motion for Summary Decision and the reply to the motion demonstrates that there is no genuine issue as to any material fact, the request for summary decision should be granted. Where a genuine question of a material fact remains, the request for summary decision must be denied. 29 CFR §§18.72.

The first step of the analysis is to determine whether there is any genuine issue of a material fact. If the pleadings and documents that the parties submitted demonstrate the existence of a genuinely disputed material fact, then summary decision cannot be granted. Denying summary decision because there is a genuine issue of material fact simply indicates that an evidentiary hearing is required to resolve some factual questions and is not an assessment on the merits of any particular claim or defense.” *Johnson v. WellPoint Cos., Inc.*, No. 11-035, 2013 WL 1182309, *7 (ARB Feb. 25, 2013).

As the ARB has earlier explained,

Determining whether there is an issue of material fact requires several steps. First, the ALJ must examine the elements of the complainant’s claims to sift the material facts from the immaterial. Once materiality is determined, the ALJ next must examine the arguments and evidence the parties submitted to determine if there is a genuine dispute as to the material facts. The party moving for summary decision bears the burden of showing that there is no genuine issue of material fact. When reviewing the evidence the parties submitted, the ALJ must view it in the light most favorable to the nonmoving party, the complainant in this case.

The moving party must come forward with an initial showing that it is entitled to summary decision. The moving party may prevail on its motion for summary decision by pointing to the absence of evidence for an essential element of the complainant's claim.

In responding to a motion for summary decision, the nonmoving party may not rest solely upon his allegations, speculation or denials, but must set forth specific facts that could support a finding in his favor. See 29 C.F.R. § 18.72. If the moving party presented admissible evidence in support of the motion for summary decision, the nonmoving party must also provide admissible evidence to raise a genuine issue of fact.

Williams, supra at *4, quoting Hasan v. Enercon Servs., Inc., No. 10-061, 2011 WL 3307579, *3 (ARB Jul. 28, 2011). see also Henderson v. Wheeling & Lake Erie Railway, No. 11-013, 2012 WL 5818126 (ARB Oct. 26, 2012)

SUMMARY OF RELEVANT DOCUMENTS

a. Complaint

The Complainant reports that he suffered a work-related back injury while working for respondent and that he was engaged in protected activity when he reported his work injury. Complainant alleges an adverse action when the employer investigated the conflicting medical reports and scheduled a hearing. Complainant alleges this was harassment and intimidation of an employee who engaged in protected activity. Complainant argues that he suffered damages as a result. Complainant alleges that he suffered emotional distress and is entitled to compensatory and punitive damages.

The parties stipulated to the timeline in their Joint Stipulation Of Agreed Facts, Appendix A. As discussed above, complainant argues that he suffered an adverse action when respondent scheduled a hearing to determine whether the injury occurred at work based on the medical report of Dr. Mullins when he initially stated that the injury occurred at home.

The Complainant claims that respondent "possessed neither clear nor convincing evidence that complainant had made a false and conflicting statement when it sent the charge letter to him on May 30, 2013." Complainant further argues that respondent was motivated to pursue an adverse action when complainant reported his injury and continued to do so.

DISCUSSION

- I. The respondent has established that there is no genuine issue of a material fact since complainant has not established his prima facie case, has not established that there was an adverse action, and is entitled to summary decision as a matter at law.

Pursuant to 29 CFR section 18.72 (a) Summary decision, “a party may move for summary decision, identifying each claim or defense-or the part of each claim or defense-on which summary decision is sought. The judge shall grant summary decision if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law.” A summary decision must be based on the pleadings and affidavits. Evidence in a formal hearing under FRS must comply with the “Rules of Evidence” set forth in 29 CFR Part 18, Subpart B. 29 CFR §1982.107(a)

The parties submitted their Joint Stipulation of Facts in support of their respective positions. The undersigned accepts their dually signed joint stipulation of facts and admits them for consideration.

Under agency rules affidavits are admissible for consideration during a motion for summary decision. Accordingly, the personal statements made by witnesses in their respective affidavits are admissible for consideration on Respondent’s Motion for Summary Decision. 29 CFR §18.72.

Based on the stipulations agreed to by the parties, “making a false and or conflicting statement is a serious offense that can result in the employee’s termination.” Based on the evidence in the record submitted by the parties, Dr. Mullins, complainant’s treating physician, specifically reported in his March 18, 2013 medical report that the injury occurred at home. Only much later did Dr. Mullins correct his medical report and state that the injury occurred at work. Due to employee leave, Federal holidays, later received, and revised medical reports, and postponement of the charge hearing by the union official, did respondent then cancel the hearing. Based on the evidence in the record, it is clear that Mr. Comstock and Mr. Wilson had no knowledge that Dr. Mullins changed his medical note from the injury occurring at home to the injury occurring at work, when that they scheduled the formal hearing. Once all of the newly received medical records were received, respondent cancelled the hearing.

Moreover, the parties stipulated that making a false or conflicting statement is a serious offense. Respondent provided Comstock affidavit, exhibit C, where Mr. Comstock stated that the respondent routinely schedules formal hearings for employees who provide false or conflicting statements. The respondent argues that an employer “is nonetheless not liable if it “demonstrates, by clear and convincing evidence, that it would have taken the same unfavorable personnel action in the absence of [the complainant’s] protected activity.” *Kuduk v. BNSF Ry. Co.*, 768 F. 3d 786, 789 (8th Cir. 2014). Based on the evidence in the record, such a hearing is conducted in the course of normal business. Moreover, the hearing was scheduled as a result of Dr. Mullins’ report that the injury occurred at home, not the complainant’s report. The respondent has shown by clear and convincing evidence that it would have taken the same personnel action in the absence of a complainant’s protected activity.

In this case, applying a broad standard for adverse action, there is still no evidence of an adverse action or that a reasonable employee would have been dissuaded from filing a work injury report. Based on the evidence in the record, there is no genuine issue as to material fact as to whether or not the complainant was subjected to an adverse employment action which is required to establish a prima facie case. Complainant has not established that he was subjected to any adverse employment action. He was not discharged, not demoted, not suspended, not reprimanded, or otherwise disciplined by the respondent as a result of reporting his March 16, 2013 injury. These actions are generally viewed as adverse. None of those actions occurred.

Summary decision is appropriate in a proceeding before an Administrative Law Judge “if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.” 29 C.F.R. § 18.72; see also *Williams v. Dallas Indep. Sch. Dist.*, No. 12-024, 2012 WL 6849447 (ARB Dec. 28, 2012). “If the complainant fails to establish an element essential to his case, there can be ‘no genuine issue as to a material fact’ since a complete failure of proof concerning an essential element of the non-moving party’s case necessarily renders all other facts immaterial.” *Coates v. Southeast Milk, Inc.*, No. 05-050, 2007 WL 4107740, *3-4 (ARB Jul. 31, 2007) Inasmuch as none of those actions were taken in this claim, complainant has failed to establish a prima facie case of any adverse action.

Based on the evidence in the record and the joint stipulations of the parties, and in viewing it in the light most favorable to the claimant, no charges are pending against complainant, complainant has not been terminated or disciplined, complainant would be able to return to work when medically released, and complainant has not worked since his injury. Based on the business practice of respondent scheduling hearings when there is a question of falsified documents, and the stipulation by the parties that such falsification is a serious offense, it would not be “reasonable” that an employee would be dissuaded from engaging in any protected activity because of the scheduling of a hearing, which was ultimately canceled once all the medical records were received and reviewed. *Koziara v. BNSF Ry. Co.*, 2015 WL 137272, at*8 (W. D. Wisconsin 2015) (citing *Burlington Northern and Santa Fe Railway Company v. White*, 548 U. S. 53, 68 (2006).

Accordingly, complainant has not suffered from an adverse action. The respondent scheduled a formal hearing based on his treating physician’s treatment record that the injury occurred at home. When the complainant reported a work injury, there was a conflict, and the parties stipulated that conflicts are a serious offense. The mere scheduling of a formal hearing and then canceling is not an adverse action.

After deliberation on the administrative file, this presiding Judge finds that complainant has not established an essential element of his prima facie case for an adverse action and therefore there is no genuine issue of material fact. This presiding judge finds that there was no adverse action. The hearing was canceled, no formal hearing was ever held, there are no charges currently pending against the complainant. Complainant was not suspended, counseled, or reprimanded after his March 16, 2013 injury, complainant has not been terminated by respondent, complainant will be allowed to return to work when he is medically able, and complainant has not been medically released for work by his treating physician. This presiding judge finds that

Respondent has established by clear and convincing evidence that the Complainant's report of a work-related injury was not a contributing factor in the alleged adverse actions.

ORDER

It is hereby **ORDERED** that:

1. Respondent's "Motion for Summary Decision" is **GRANTED**.
2. The hearing scheduled for December 15, 2015 is **CANCELED**.
3. This complaint is hereby **DISMISSED** with prejudice.

DANA ROSEN
Administrative Law Judge

DR/ard
Newport News, Virginia

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. § 1982.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. See 29 C.F.R. § 1982.110(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, Division of Fair Labor Standards. See 29 C.F.R. § 1982.110(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. §§ 1982.109(e) and 1982.110(a). 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. §§ 1982.110(a) and (b).