



Issue Date: 11 October 2016

CASE NO. 2016-FRS-00012

In the Matter of

CHRIS MCGEE,
Complainant,

v.

TACOMA RAIL,
Respondent.

Appearances: Chris McGee, Complainant
Self-represented

Tracy Holmes Donesky
M. Joseph Sloan
for Respondent

Before: Steven B. Berlin
Administrative Law Judge

DECISION AND ORDER DISMISSING CASE

This matter arises under the employee protection (“whistleblower”) provision of the Federal Rail Safety Act. 49 U.S.C. § 20109. Complainant alleges that Tacoma Rail terminated the employment in retaliation for his following his physician’s treatment plan and otherwise engaging in activity that the Act protects.¹

On June 10, 2016, Tacoma Rail filed a motion to dismiss based on Complainant’s alleged failure to prosecute and failure to comply with court orders. I will grant the motion. Complainant’s ongoing failure and refusal to comply with orders of the administrative law judge prevent the case from proceeding to trial, and no lesser sanction is sufficient.

¹ As the Act provides: “Discipline.-A railroad carrier or person covered under this section may not discipline . . . an employee . . . for following orders or a treatment plan of a treating physician [except under certain circumstances not relevant here]. For purposes of this paragraph, the term “discipline” means to bring charges against a person in a disciplinary proceeding, suspend, terminate, place on probation, or make note of reprimand on an employee’s record.” 29 U.S.C. § 20109(c)(2).

Procedural History

On November 10, 2015, OSHA's Acting Assistant Regional Administrator published "Secretary's Findings" in which she rejected Complainant's claim. She found that Tacoma Rail had provided clear and convincing evidence that it had terminated the employment after Complainant fell asleep while operating a moving locomotive. This was in violation of multiple applicable rules of railroad operation. There was a history of previous discipline for similar conduct.

On or about December 4, 2015, Complainant timely requested a hearing before an administrative law judge. The case was assigned to the undersigned later that month. At no time during the litigation has any attorney or other representative filed an appearance on Complainant's behalf. Defense counsel appeared and filed an answer to Complainant's complaint on Respondent's behalf. On January 20, 2016, I noticed a hearing in Seattle, Washington for June 20, 2016. I included a Pre-Trial Order.

The Pre-Trial Order required the parties to make initial disclosures as required in 29 C.F.R. § 18.50(c)(1).² The Order also notified the parties that they must conduct discovery "according to 29 C.F.R. Part 18 unless the Act, its implementing regulations, or this order imposes a different requirement," citing generally 29 C.F.R. §§ 18.50-18.57.

On April 8, 2016, I conducted a telephonic status conference. Complainant represented himself. Counsel of record represented Respondent. It emerged that – the applicable time periods having run – Complainant had failed to serve initial disclosures and failed to respond to Respondent's interrogatories and requests for production. Respondent had noticed Complainant's deposition for April 21, 2016, but could not usefully proceed until it received Complainant's disclosures and discovery responses. Respondent intended to file a motion for summary decision before the May 11, 2016 filing deadline, but Complainant's failure to meet his disclosure and discovery obligations was stymying them.

Complainant admitted that he had been difficult to reach. He said it was because his phone had been stolen. He said that he had a lawyer and that he had given the lawyer all the materials he'd received on the case. He had only learned two days earlier (on April 6, 2016) that his lawyer "wasn't going to be able to represent" him.³ Complainant stated that this lawyer referred him to a lawyer in Tacoma, Washington, whom Complainant was going to see later that same day (April 8, 2016).⁴

² As the Pre-Trial order stated: "In every case, including cases where a party does not have an attorney, the disclosures required by 29 C.F.R. § 18.50(c) must be made."

³ Transcript, Apr. 8, 2016 at 6.

⁴ Complainant identified the lawyer who had been reviewing his documents as a "railroad" attorney "out of Oregon," named "Frank Mula." He could not spell the attorney's name. A search of Oregon state bar records for attorneys with a first name of "Frank" and a last name beginning with the letter "M" produce six names, none of which is similar to "Frank Mula," except perhaps Frank T. Mussell, but Mr. Mussell's practice is unrelated to railroads.

I explained to Complainant that no lawyer had filed an appearance, which an attorney must do to become active in a case.⁵ As a result, Complainant had been self-represented at this Office throughout the litigation.

I encouraged Complainant to retain counsel and stated that I would give him some time to do so. I added that the case had been pending for nearly five months and that Complainant had to complete his search for counsel promptly so that the matter could progress. Complainant stated that he understood.

I explained to Complainant in lay terms what he had to produce to Respondent as initial disclosures. He stated that he understood and could comply even if he did not find a lawyer.⁶ I ordered the parties to submit status reports within 28 days.

On April 27, 2016, I issued an order. To give Complainant additional time to comply with the disclosures and discovery requests as well as some limited additional time to look for counsel, I continued the hearing to October 17, 2016. I ordered Complainant to make the initial disclosures and serve the discovery responses.⁷ I set as deadlines whichever came first of the following two dates: (1) 28 days after a representative filed an appearance on Complainant's behalf, or (2) May 27, 2016, even if Complainant did not have a representative. I did this bearing in mind Complainant's explicit statement during the April 8, 2016 phone conference that he could provide the initial disclosures without a lawyer's assistance. The Order warned that Complainant's failure to comply could result in the imposition of "significant sanctions" that "could affect the outcome of the case."

Complainant failed to file a status report as required at the April 8, 2016 status conference. More importantly, he failed to comply with any part of the order compelling disclosures and discovery. As no attorney appeared on Complainant's behalf, under the order of April 27, 2016, he was required to serve his disclosures and discovery responses on or before May 27, 2016. He served neither. I had notified Complainant in the order compelling these disclosures and responses that he could ask for additional time if needed, but he did not do so. He simply did nothing.

On June 10, 2016, Respondent filed the currently pending motion to dismiss. On June 13, 2016, I issued an order requiring Complainant to show cause why the motion should not be granted and the case dismissed. I required Complainant to file a response by June 30, 2016. I warned him that if he did not timely oppose Respondent's motion, I would likely grant the motion.

On June 29, 2016 (the day before the deadline), Complainant wrote that he needed more time because "for the past month" he had been recovering from a gunshot wound. He provided the

⁵ See 29 C.F.R. § 18.22(a) ("When first making an appearance, each representative must file a notice of appearance that indicates on whose behalf the appearance is made and the proceeding name and docket number"). Defense counsel confirmed that they had never received anything from a lawyer representing Complainant.

⁶ See Transcript (Apr. 8, 2016 conference) at 13:12-14:8-13.

⁷ "Order Continuing Hearing and Re: Initial Disclosures and Pending Discovery" (Apr. 27, 2016).

name of a physician's assistant but did not state when he would file an opposition to Respondent's motion to dismiss.

On June 30, 2016, I extended to July 29, 2016 Complainant's time to oppose Respondent's motion. I explained that, if Complainant needed yet another extension of time to oppose Respondent's motion, he must include "a written statement from his treating physician, explaining the medical reasons why he cannot prepare, type, sign, and submit a written document to this Office." I added that the "doctor's statement must estimate when Complainant [would] be able to submit such a document." I warned that, "Absent a doctor's supporting statement, no further extension of time for any reason related to the gunshot wound [would] be allowed."

On July 28, 2016 (again the last day), Complainant wrote to request a second extension of time because of the gunshot wound. He stated that the injury, combined with the effects of pain medication, made him unable to walk or "take care of business." He attached a letter (dated the same day, July 28, 2016) from the physician's assistant.

The physician's assistant summarizes medical records that show that, on June 1, 2016, Complainant was admitted to a hospital with a comminuted fracture secondary to a gunshot wound; a diagnostic arthroscopy was done and the knee washed out with saline; and Complainant was discharged from the hospital the next day (June 2, 2016). The physician's assistant added the following: "Due to above condition, patient was incapacitated and not able to work for the conditioned [sic] mentioned above."

Complainant's second request for more time did not meet the requirements of the Order of June 30, 2016. There was a statement from a physician's assistant, but the physician's assistant did not say that she was Complainant's treating provider, nor did she say anything from which I could infer that she was; she merely summarized what the medical record showed. The physician assistant's statement that Complainant could not "work" could well have concerned his job as a rail worker; nothing suggests that the physician's assistant meant that a knee injury kept Complainant from typing a document to send to a government agency. The physician's assistant wrote in the past tense that the "patient *was* incapacitated and unable to work," (emphasis added) not that he *is* incapacitated and unable to work: She confirmed no more than that he was incapacitated as of June 1 and 2, 2016, not as of June 28, 2016, when she wrote her note. The physician's assistant did not estimate when Complainant would be able to file a brief. Indeed, nothing suggests that the physician's assistant examined Complainant on June 28, 2016, or at any time. Finally, though Complainant commented that pain medication was limiting his ability to draft an opposition, the physician's assistant said nothing about pain medication.

Nonetheless, in an effort to bring the case to a full adjudication on the merits, I granted Complainant a second extension of time. It would have been difficult to fashion a sanction short of dismissal to address Complainant's failure and refusal to make any disclosures or discovery, and I had in mind both that Complainant was self-represented and that public policy favors a disposition on the merits.

When the twice-extended deadline arrived, Complainant did not file an opposition to Respondent's motion to dismiss. Instead, on August 23, 2016, he asked for a third extension.

He said he had been “incapacitated by the injury and the strong pain medication prescribed to [him] for the unrelenting pain” but that he now was “well enough to take care of [his] legal responsibilities.” He offered no updated information from a medical provider. Rather, he included only a copy of the medical record that the physician’s assistant had summarized on the previous request for more time.

The medical record shows nothing that would have prevented Complainant from filing his opposition papers – or serving his initial disclosures and discovery responses – long before. On June 1, 2016, the doctor advised Complainant to avoid flexing the knee beyond 20 degrees for eight weeks, to use crutches initially, and to report any increase in pain or signs of infection. There is no mention of pain medication. There is also no indication in that Complainant returned to his medical provider with any increase in pain, sign of infection, or other complication. There is no indication of any restrictions beyond the eight weeks of restricted range of motion that ended on July 27, 2016 – well before the August 23, 2016 deadline for Complainant’s opposition brief. As far as I can tell, the restriction on range of motion of his knee would not have prevented Complainant from writing an opposition to Respondent’s motion even during the eight weeks it applied. Nor would it have prevented him from serving the initial disclosures or responses to Respondent’s discovery.

Nonetheless, on August 29, 2016, I extended Complainant’s time to oppose a dismissal one last time. With a self-represented party who will not comply with any disclosure or discovery requirements, it is difficult to impose any useful sanction that will not have the effect of ending the litigation unfavorably to that litigant. Though aware of the OSHA findings, the hearing at this Office is *de novo*. If there was a way to reach the merits without unfair prejudice to Respondent, I felt that I should give Complainant a last opportunity. I gave him until September 12, 2016, to file and serve an opposition. I warned him that no further extensions of time would be allowed and that, if he did not file and serve a timely and substantively sufficient response, the likely result would be a dismissal of the claim. Finally, I reminded Complainant that his pre-hearing filings were due on file at this Office by September 19, 2016.

On September 12, 2016, Complainant answered the order to show cause by filing an opposition to Respondent’s motion to dismiss.⁸ Complainant stated that an attorney (whom he did not name) accepted his case at some unidentified date. He said that he did not learn until May 2016 that the attorney had a stroke and could not continue the representation. He offered no documentation of any of this. He then stated that, as of June 1, 2016, the gunshot wound to his knee incapacitated him because of the pain and pain medication as well as his difficulty walking. He offered no further documentation on the gunshot wound or pain medication.

⁸ It appears likely that Complainant did not serve defense counsel with his opposition. In a letter renewing Respondent’s motion to dismiss on September 26, 2016, defense counsel Sloan stated that, to date, Tacoma Rail had not received an opposition. Complainant had failed to serve on the defense a previous filing, and I reminded him at that time that he had to serve all filings on defense counsel. I also reminded in the various orders requiring an opposition to the motion to dismiss that he had to serve the defense. Though Complainant’s failure to serve his opposition on the defense is a basis to strike his opposition brief, I instead decide the motion on the merits.

On September 19, 2016, Complainant failed to file the required pre-trial statement, witness list, and exhibit list. I had reminded him in the Order of August 19, 2016 of these requirements and of the deadline. He failed to comply despite the reminder.

On September 26, 2016, Respondent renewed its motion to dismiss. Its counsel stated that Complainant still had not served initial disclosures or the discovery responses. Thus, with the second trial setting only five weeks away, Complainant had not served initial disclosures or a response of any kind to any of the discovery Respondent had propounded. These are the disclosures and responses that the order of April 27, 2016 required Complainant to serve on Respondent no later than May 27, 2016.

Findings

Complainant failed to comply with the initial disclosure requirement in the Pre-Trial Order. He failed to make any response to Respondent's interrogatories or requests for production. He failed to comply with the order requiring him by May 27, 2016 to make the initial disclosures and answer Respondent's discovery requests. He failed to file a required status report. He failed to file and serve required pre-trial filings.

Though Complainant states that he did not learn until May 2016 that his lawyer could no longer represent him, Complainant neglects that, in the telephonic status conference on April 8, 2016, he stated that he had learned this two days earlier (April 6, 2016).⁹ Thus, he knew that no lawyer was representing him by April 6, 2016, at the latest. All of the discussion at the April 8, 2016 conference was based on an understanding that Complainant was self-represented. Complainant knew from the Order of April 27, 2016, that he had to serve the initial disclosures and the discovery responses on or before May 27, 2016, even if he didn't have lawyer. He had stated for the record that he was able to make the disclosures on his own. But he failed to comply with the order compelling those disclosures.

Nor does the gunshot wound explain Complainant's failure to comply. The May 27, 2016 deadline occurred *before* the gunshot wound, which happened on June 1, 2016. The gunshot wound thus cannot explain Complainant's failure to comply with the April 27, 2016 order compelling the initial disclosures and discovery responses.

⁹ I find not credible Complainant's assertion that an attorney was representing him at least at some point in the litigation. Most clients remember the name of an attorney who has taken their case that is currently in active litigation, especially when they just spoke to the attorney two days earlier and learned that the attorney had to withdraw from the representation. During the April 8, 2016 phone call, Complainant identified his "Oregon-based" attorney with a name that cannot be found in Oregon state bar records. Attorneys who litigate in any civil court or administrative agency know that they must file an appearance. No attorney filed an appearance. Generally (though not always), attorneys who have accepted a case identify themselves to opposing counsel; otherwise, opposing counsel (not knowing of the representation) will continue to contact the client directly. No attorney contacted defense counsel on Complainant's behalf at any time in the litigation.

It could be that Complainant discussed with an attorney the possibility that the attorney might accept the representation. It is also possible that Complainant sent whatever documents he had to the attorney for him to review. But that falls short of the attorney's accepting the case.

Moreover, Complainant failed to substantiate that the gunshot wound debilitated him so as to delay his compliance with this Office's orders for more than a few days. The medical records Complainant submitted do not mention Percocet; they show no prescribed pain medication. The physician's assistant said nothing about pain medication. No medical professional suggested that a limitation to 20 degrees range of motion on one knee would keep Complainant from preparing, filing, and serving either an opposition to the motion to dismiss or his disclosures and discovery responses. Without the opinion of a medical professional, I find no reason to accept that a person who needed to use crutches temporarily cannot sit and type documents.

In addition, Complainant conceded on August 23, 2016, that he had recovered sufficiently from the gunshot wound to be "well enough to take care of [his] legal responsibilities." Yet, as of September 26, 2016, he still had not served initial disclosures or responses to Respondent's interrogatories or requests for production.

As a result, with the hearing now only six days away, Complainant's recalcitrance has deprived Respondent of all meaningful discovery. It has deprived Respondent of a meaningful opportunity to file and have decided a motion for summary decision. It brought the litigation to a halt at its most initial phase.

Discussion¹⁰

Initial disclosures are required within 21 days after an administrative law judge issues the first order in the case. 29 C.F.R. § 18.50(c)(1)(iv). Actions under the Federal Rail Safety Act are not exempted from the disclosure requirement, nor are self-represented parties. *Id.* § 18.50(c)(1)(ii), (iii). A party may propound discovery any time after a judge issues an initial order. 29 C.F.R. § 18.50(a)(1). The Pre-Trial Order issued on January 20, 2016, expressly stated that even self-represented parties must comply with the initial disclosure requirements and must be guided on discovery obligations under 29 C.F.R. §§ 18.50 through 18.57. I explained to Complainant in plain English at the phone conference on April 8, 2016, what he had to do to comply with the initial disclosure requirement. He said he understood.¹¹

A party asserting that an opposing party has failed to comply with disclosure or discovery requirements may move for an order compelling discovery. 29 C.F.R. § 18.57(a)(2)(i) (initial disclosures); *id.* § 18.57(a)(2)(ii)(discovery responses).

If a party fails to obey an order under 29 C.F.R. § 18.57(a), "the judge may issue further just orders. They may include the following:

- (i) Directing that the matters embraced in the order or other designated facts be taken as established for purposes of the proceeding, as the prevailing party claims;

¹⁰ The applicable procedures for initial disclosures, discovery practice, and related sanctions are found in this Office's Rules of Practice and Procedure (29 C.F.R. Part 18 A). *See* 29 C.F.R. § 1982.107(a) (implementing regulations of the Federal Rail Safety Act).

¹¹ Complainant is a native English speaker.

- (ii) Prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) Striking claims or defenses in whole or in part;
- (iv) Staying further proceedings until the order is obeyed;
- (v) Dismissing the proceeding in whole or in part; or
- (vi) Rendering a default decision and order against the disobedient party.”

29 C.F.R. § 18.57(b)(1). These same sanctions are authorized – even absent an order compelling production – when a party, after being properly served with interrogatories or requests for production, fails to serve answers, objections, or a written response. 29 C.F.R. § 18.57(d)(1)(i), (d)(3).

There is no question that Complainant has failed to comply with the order compelling him to make initial disclosures and respond to Respondent’s interrogatories and requests for production. Complainant’s failures would not be excusable even if they resulted from the acts of his counsel. *Link v. Wabash R. Co.*, 370 U.S. 626, 633034 (1962) (“Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent.”).

But no failure of his counsel (if Complainant ever had one) prevented him complying with the order compelling disclosures and discovery responses. The order issued after Complainant stated that his attorney had withdrawn from the representation. I told Complainant and he understood that he was representing himself at the time. He said he understood what he had to do on the disclosures and discovery, and he stated that he could do it on his own, with or without a lawyer.

The gunshot wound is no excuse because the order compelling production required Complainant to serve his responses *before* the gunshot wound occurred. Worse, Complainant admitted that he had sufficiently recovered from the wound by late August 2016 to take care of his legal obligations, yet he still hasn’t complied with the order.

When a complainant fails to obey an administrative law judge’s orders compelling discovery and fails to show good cause for the failure, a dismissal is within the judge’s discretion. *Anderson v. Grayhound Trash Removal*, ARB No. 2007-STA-024 (Surface Transportation Assistance Act) (Feb. 27, 2009), 2009 WL 564759; *Mathews v. Labarge, Inc.*, ARB No. 08-038 (ARB Nov. 26, 2008) slip op. at 3 (Sarbanes-Oxley Act); *Zahara v. SLM Corp.*, ARB No. 08-020 (March 7, 2008) slip op. at 3 (Civil Service Reform Act of 1978); *Carciero v. Sodexo Alliance*, OALJ No. 2008-SOX-00013 (Mar. 17, 2009) (Geraghty, ALJ).

Applying the Federal Rules of Civil Procedure, the Ninth Circuit said of dismissal as a sanction:

A district court must weigh five factors in determining whether to dismiss a case for failure to comply with a court order: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.” It is not necessary for a district court to make explicit findings to show that it has considered these factors. We may review the record independently to determine if the district court has abused its discretion. *Id.*

Malone v. U.S. Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987) (citations omitted) (considering application of FED. R. CIV. P. 16(f), 37(b)(2), and 41(b)).

Though our procedural rules (29 C.F.R. § 18.57) are controlling and not the Federal Rules of Civil Procedure, the relevant language in the applicable rules is very similar, and I find that the Ninth Circuit’s analysis provides an instructive framework for the exercise of my discretion here.

Public interest. The hearing in this matter was continued to accommodate Complainant, including to give him more time to meet his disclosure and discovery obligations. Congress intended that the Department of Labor decide cases the Federal Rail Safety Act promptly. *See* 49 U.S.C. § 20109(d)(3) (allowing *de novo* litigation in the district court if case handling at DOL is not concluded within 210 days). Consistent with this, the Secretary’s regulations require that cases under the Act be expedited. *See* 29 C.F.R. § 1982.107(b). These requirements manifest the public’s interest in expeditious handling of these safety- and security-related cases. Allowing Complainant another continuance of the hearing would put the case back to its very beginning, with the parties left to accomplish everything needed for a fair and meaningful hearing.

Dockets. The administrative law judge has devoted considerable time to this case. The numerous orders have been of no avail in obtaining Complainant’s compliance with his litigation obligations. There is nothing to suggest that further efforts will allow for a fair hearing within any reasonable time and without greater expenditure of this Office’s limited resources.

Prejudice to Respondent. There is no question that, with the trial now less than a week away, Complainant’s failures have prejudiced Respondent. Respondent has been deprived of the disclosure and discovery that the applicable rules allow. If required to try the case without the disclosures and discovery, Respondent would be exposed to the kind of trial by ambush that our rules reject, as have the rules long-adopted in the federal and state courts. Respondent has stated since early in the litigation that it planned a motion for summary decision. The applicable rules allow for such motions. *See* 29 C.F.R. § 18.72. Respondent should not be put to the cost of a trial without an opportunity to have such a motion decided. Complainant’s claims expose Respondent to significant damage assessments, including punitive damages. *See* 49 U.S.C. § 20109(e)(3). Respondent cannot be placed in such jeopardy without appropriate procedural safeguards.

Public policy favoring disposition on the merits. This is the concern that led to many repeated opportunities for Complainant to comply with this Office’s orders and to explain his failures to comply in the past. Because Complainant is self-represented, I allowed him numerous

opportunities despite his ongoing failure to comply with expressly stated requirements for documentation of what might be delaying him. Yet Complainant never complied with his disclosure and discovery obligations. When a complainant – self-represented or not – roundly obstructs the process toward a disposition on the merits, despite being told what is required and given more than ample time to comply and warnings about not complying, the policy favoring disposition on the merits has been addressed.

Lesser sanctions. Under these circumstances, no sanction less than a dismissal is adequate. Despite a direct order, Complainant has obstructed the litigation such that a fair hearing is not possible. When he will not allow any meaningful discovery, an evidentiary preclusion would have to exclude *all* evidence to address the scope of his failures. The same applies to issue preclusion. As all relevant matters are encompassed in the initial disclosures, all matters would have to be viewed as established for the defense. There is only one claim to be stricken; striking only *some* of the claims is not an option. There is similarly no dismissal “in part” as there is only one claim. I warned Complainant in the order compelling him to make the disclosures and respond to the discovery that a failure to comply could result in “significant sanctions” affecting the outcome of the case. (Order, Apr. 27, 2016.) Dismissal is the only appropriate sanction under these circumstances.

Order

This matter is DISMISSED with prejudice. Complainant shall take nothing by reason of his complaint.

SO ORDERED.

STEVEN B. BERLIN
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. § 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).