



**Issue Date: 03 May 2018**

Case No.: 2017-FRS-00078

In the Matter of

**CARMELA SIROIS**  
Complainant

v.

**LONG ISLAND RAILROAD COMPANY**  
Respondent

**DECISION AND ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY  
DECISION AND DISMISSING COMPLAINANT'S COMPLAINT**

This proceeding arises under the employee protection provisions of the Federal Rail Safety Act of 1982 ("FRSA" or "the Act"), 49 U.S.C. § 20109 (2012), and the regulations of the Secretary of Labor published at 29 C.F.R. Part 1982. Carmela Sirois ("Complainant") alleges that Long Island Railroad Company ("Respondent") took adverse employment actions against her for harassment, intimidation, and denial of medical benefits.

**I. PROCEDURAL BACKGROUND**

Complainant filed a complaint under Section 806 of the Act on January 31, 2017. On June 12, 2017, OSHA denied Complainant's complaint, finding that Complainant's alleged protected activity (reporting a work related injury) was not a contributory factor to Respondent's alleged adverse employment action (changing the classification of Complainant's injury from work-related to non-work-related). On July 11, 2017, Complainant appealed OSHA's findings.

On September 13, 2017, the undersigned issued a Notice of Hearing scheduling the hearing for March 12, 2018. Pursuant to a joint request, on January 30, 2018, the undersigned rescheduled the hearing for Monday May 7, 2018. On March 26, 2018, Respondent's counsel filed a Motion for Summary Decision and Brief in Support. Respondent also submitted a letter, received March 29, 2018, advising of a change in the relevant case law. Complainant filed no response to the Motion for Summary Decision. Respondent argues that Complainant cannot establish that she suffered an adverse employment action or that her protected activity was a contributing factor in any unfavorable personnel decision. Respondent also argues that, to the extent Complainant is alleging that Respondent engaged in adverse employment actions in 2012 or 2013, Complainant's action is time-barred.

## II. SUMMARY OF THE EVIDENCE

### A. Complainant's Deposition Transcript

In support of its Motion for Summary Decision, Respondent attached Complainant's deposition from February 26, 2018. Complainant testified that she currently lives in Lancaster, Pennsylvania and has not had a New York address since 2011. She was taking Oxycodone four times a day and she did not feel it would affect her ability to testify truthfully. (Tr. at 4-5.) She is a station appearance maintainer, and her duties include cleaning offices, platforms, bathrooms, carrying garbage to dumpsters, lifting boxes and mop buckets, and snow removal. She described it as a physical job. She is represented by the Transportation Communications Union ("TCU"). She has health insurance through Respondent. (Transcript ("Tr.") at 4-7.)

On July 16, 2012, Complainant moved some chairs so she could have room to vacuum the area under a desk in a third floor office. When she picked up the hose of the vacuum, her back snapped and she could not straighten up. Thereafter, her foreman, Terrence McKennel, gave her ice and Tylenol, but the pain worsened; Mr. McKennel then called the police department. An ambulance took her to Jamaica Hospital, where she had an X-ray and doctors advised her to rest for ten days. She assumed that Respondent paid for her hospital visit because the foreman who accompanied her to the hospital characterized the injury as work-related and said that Workers' Compensation would cover it. She did not know whether Workers' Compensation covered Respondent's employees. (Tr. at 8-11.)

Complainant filed an OSHA complaint that same day. (EX C). She signed a settlement agreement stemming from this incident and thereafter she underwent three panel doctor examinations. The second examination is reflected in Exhibit G, dated December 9, 2014. Exhibit G reflects Complainant's understanding that her status changed from Disabled Sick ("DS") to Disabled Accident ("DA"), which indicated that her pay had been reinstated and that Respondent would continue paying her medical bills. In a change of status letter dated November 16, 2016, Respondent advised Complainant of her placement on non-paid "DA" status (EX J). (Tr. at 15-22.)

Respondent provides insurance to Complainant. Respondent's insurance plan does not cover third party claims. When she tried to explain that she does not have any other coverage, her insurance company informed her that it did not cover the second surgery she needed because it was a new procedure. According to Complainant, her company-provided insurance should pay for this treatment because it paid for the first surgery and preemptively returned her to work before she fully healed. EX K reflects Complainant's status change on November 22, 2016 from "DS" to "DA" after her first IME. With her status temporarily returned to "DA," the union representing Complainant requested another IME. As of December 6, 2016, Complainant received her regular compensation while she missed work, having used all of her available sick time and vacation time until they were exhausted. No one had told Complainant to tell the insurance company that Workers' Compensation benefits did not cover her or advised her that her company-provided insurance pays for medical treatment for on-the-job injuries. (Tr. at 22-28.)

Complainant underwent three IMEs in total. Dr. Baker composed a medical report dated April 11, 2017, which concluded that Complainant's injury was not work-related. An individual at Complainant's insurance company told her that insurance would not pay for a third party claim, but she could not recall the name of that person. (Tr. at 28-31.)

Upon reviewing EX Q, Complainant testified that Respondent committed multiple adverse actions against her. First, after her injury on July 17, 2012, Respondent told her that the injury was not work-related. In October 2013 and again in November 2016, Respondent changed her status. Complainant signed a Settlement Agreement with Respondent after those first two alleged adverse actions. Respondent sent Complainant to its company doctor, Dr. Wishnuff. (Tr. at 32-34.) Four or five hours after she suffered the injury, Dr. Wishnuff opined that Complainant's claim was not work-related. He had never treated Complainant before. Dr. Baker performed Complainant's last IME. He was supposed to review Complainant's paperwork and examine her, according to Complainant, but only briefly reviewed the paperwork before rendering his medical opinion. Complainant had expected him to perform an IME just as past doctors did. Dr. Christian Fras also performed an IME for Complainant. Dr. John Paul Kelleher performed surgery on Complainant, but did not communicate with her insurance company. (Tr. at 42-43.)

In Complainant's view, Respondent targeted and discriminated against her when it continually overturned the decision as to coverage of her injury. After she suffered the 2012 injury, Complainant used all of her paid time-off, including vacation and sick time, because Respondent did not otherwise compensate her during this period. Respondent did pay Complainant a salary "off and on" after the IME panel rendered her in "DA" status until the second IME panel. Respondent paid Complainant retroactively between 2012 and 2016. (Tr. at 37-40.)

Complainant has suffered mental anguish as a result of her claim. She has not sought medical help for her mental anguish because her insurance does not cover it and even if it did, she could not afford the co-pay. Her family and friends have helped her pay her rent because she has no income currently. Complainant declared bankruptcy in 2008. Respondent did not terminate her private medical insurance and did not tell her that she could not seek treatment. Complainant felt that Respondent denied her surgery by not paying for it. (Tr. at 44-46.)

B. Exhibits

- Exhibit A: Collective Bargaining Agreement ("CBA") between Respondent and Transportation Communications Union
- Exhibit B: Excerpt of Insurance Benefit Form, August 16, 2012
- Exhibit C: Complainant's OSHA Complaint, January 8, 2013
- Exhibit D: Settlement Agreement General Release, March 20, 2014
- Exhibit F: Settlement Agreement, March 26, 2014
- Exhibit G: Dr. Christian Fras's Independent Medical Examination, December 9, 2014
- Exhibit H: Change of Status Notice, December 10, 2014
- Exhibit I: Respondent's Approval of Complainant's Surgical Procedure, March 11, 2016
- Exhibit J: Change of Status Notice, November 16, 2016

- Exhibit K: Change of Status Notice, November 22, 2016
- Exhibit O: Dr. David C. Baker's Independent Medical Examination, April 11, 2017
- Exhibit Q: Complainant's Whistleblower Online Complaint, January 31, 2017
- Exhibit R: OSHA Findings, June 12, 2017
- Exhibit S: Complainant's Objection to OSHA Findings, July 11, 2017

#### IV. THE PARTIES' ARGUMENTS ON THE MOTIONS

Respondent first argues that it did not violate FRSA Subsections (a)(3) or (a)(4) in that Complainant did not suffer an adverse action. It did not discharge, demote, suspend, or reprimand her; bring charges against her; threaten her with discipline; or take action that would have dissuaded her from reporting an on-the-job injury, citing to Burlington Northern & Santa Fe Railway v. White. See 548 U.S. 53, 27 (2006.) Instead, Respondent avers that it simply disagreed with Complainant's assertion that her claimed injury relates to an incident that occurred July 16, 2012. Moreover, a neutral Independent Medical Examination ("IME") doctor agreed with Respondent's position. See Employer's Brief at 7.

Even assuming Complainant suffered an adverse action, Respondent contends, her OSHA complaint about an on-the-job injury did not contribute to the adverse action. Complainant filed her complaint regarding the July 2012 incident in January 2013. More than four years later, Dr. Wishnuff concluded that Complainant's condition no longer stemmed from the July 2012 vacuum hose incident. According to Respondent, the lack of temporal proximity defeats any assertion that Complainant's protected activity was a contributing factor in any adverse action, citing Hughes v. CSX Transportation, Inc. for the proposition that an interim eighteen month period between an injury report and suspension did not suggest a causal relationship. See 2012-FRS-00091, slip op. at 17 (Sept. 25, 2014.) Moreover, Complainant cannot show that Respondent would have treated her any better had she not reported the injury. Respondent avers that it treated her better than had she not reported the injury as evidenced by her full salary and payment of medical benefits for a period of over four years. Had she not reported the injury, Complainant would not have received this assistance. Further, by filing the OSHA complaint and settling the matter, Complainant underwent an examination conducted by a panel doctor, who determined that the injury was job-related. Based on this finding, she continued to receive her salary and medical payments from Respondent until late 2016. See Employer's Brief at 8-9.

Second, Respondent contends that it did not violate FRSA Subsections 49 U.S.C. § 20109 (c)(1) as it did not "deny, delay, or interfere with the medical or first aid treatment" of Complainant or fail to promptly arrange for transportation to the hospital. Neither did Respondent "discipline, or threaten discipline to, an employee for requesting medical or first aid treatment, or for following orders or a treatment plan of a treating physician" under Subsection (c)(2). Instead, Respondent asserts that it arranged to have Complainant promptly transported to the hospital following her injury and did not discipline her for the ensuing medical treatment. That two physicians concluded that Complainant's condition was not work-related had no effect on her health insurance, which she continued to receive. Respondent continues to pay the majority of her insurance premiums, but never told her that she could not receive treatment for her condition. Respondent also never advised the insurance company as to whether to pay for

her treatment. Moreover, Respondent represents that it did not prevent her from obtaining a panel doctor's opinion pursuant to the CBA. See Employer's Brief at 9-10.

Respondent argues that it did not deny, delay, or interfere with Complainant's medical treatment. Instead, they assert, Complainant misunderstands her right to seek payment for treatment through her employer-sponsored medical insurance. She incorrectly advised the insurance company that Workers' Compensation covers employees of interstate railroads. Because Complainant told them this, the insurance company would not pay for her treatment. Had she correctly conveyed to the insurance company that Workers' Compensation did not cover her claim, Respondent avers, the company would have considered her claim. Respondent did not interfere with the insurance company's consideration. See Employer's Brief at 10.

Finally, Respondent argues that Claimant is time barred from bringing allegations that occurred in July 2012 and October 2013 as 49 U.S.C. § 20109(d)(2)(A)(ii) provides her with 180 days to commence an action from the date the alleged violation occurred. As Complainant filed her claim in January 2017, she may only bring claims that allegedly occurred from July 2016 onward. Therefore, she cannot do so for incidents that may have occurred in July 2012 and October 2013. Further, Respondent asserts that the claim should be dismissed as a result of a March 20, 2014 settlement Complainant reached with Respondent, releasing the latter of these claims in exchange for \$14,000 and additional benefits. See Employer's Brief at 11.

#### IV. LEGAL STANDARD

The purpose of summary decision is promptly to dispose of actions in which the pleadings, affidavits, material obtained by discovery or other materials show that there is no genuine issue as to any material fact. 29 C.F.R. § 18.72; see also Federal Rules of Civil Procedure 56(c).<sup>1</sup> An issue is genuine if sufficient evidence exists on each side so that a rational trier of fact could resolve the issue either way. See Adler v. Wal-Mart Stores, Inc., 144 F.3d 664, 670 (10th Cir. 1998); Oliphant v. Simboski, No. 3:03cv2038 (SRU), 2005 U.S. Dist. LEXIS 5353, at \*4 (D. Conn. Mar. 31, 2005). A fact is material and precludes a grant of summary decision if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or a defense asserted by the parties. See Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The substantive law governing the case will identify those facts that are material and "only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Disability Advocates, Inc. v. Paterson, 598 F. Supp. 2d 289, 294 (E.D.N.Y. 2009) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). If no material factual issues are present, a party moving for summary decision is entitled to a judgment as a matter of law. 29 C.F.R. 18.72(a).

The party moving for summary decision carries the burden of proof. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Because the burden is on the moving party, the evidence presented is construed in favor of the party opposing the motion, who is given the benefit of all

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<sup>1</sup> "The Federal Rules of Civil Procedure (FRCP) apply in any situation not provided for or controlled by these rules, or a governing statute, regulation, or executive order." 29 C.F.R. § 18.10(a).

favorable evidentiary inferences. See id. The non-moving party must set forth specific facts showing that there is a genuine issue for trial. See Anderson, 477 U.S.at 248. In setting forth these specific facts, the non-moving party must identify the facts by reference to affidavits, deposition transcripts, or specific exhibits. See Adler, 144 F.3d at 671. “One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses, and . . . [the rule] should be interpreted in a way that allows it to accomplish this purpose.” Celotex Corp., 477 U.S. at 323–24.

## V. **FACTS PRESENTED IN LIGHT MOST FAVORABLE TO COMPLAINANT**

Complainant did not submit a response to Respondent’s Motion for Summary Decision. Based on her original complaint, deposition testimony, and the representations of Respondent, the undersigned can glean the following facts in the light most favorable to Complainant:

1. Complainant had prior physical ailments related to a fall in 2008 in which she injured her hip. (See EX C at 2.)
2. In the summer of 2011, Complainant received treatment for sciatica and did not work from November 2011 to February 2012, when she underwent a return-to-work physical examination, including a strenuous physical examination that included lifting a fifty-pound bag, lifting and moving a bucket of water, climbing stairs, and pulling a mop attached to a pulley. Respondent’s contractor-operated Occupational Health Services Department (“OHS”) cleared her return in February 2012. (See EX C at 2.)
3. Complainant worked regularly from February 2012 to July 16, 2012, when Complainant suffered an injury while vacuuming offices at the Jamaica Station when she bent down to pick up a vacuum hose and felt pain in her back and could not straighten up. (See Employer’s Brief at 3, EX C at 2.)
4. Complainant reported the incident to foreman Terrence McKinnell, who called an ambulance and escorted her to Jamaica Hospital, where a doctor instructed her to follow up with an orthopedic doctor and prescribed an anti-inflammatory and muscle relaxant. (See Employer’s Brief at 3, EX C at 2.)
5. On July 17, 2012, Complainant reported to OHS, where Complainant explained what transpired to a physician assistant and Dr. Wishnuff advised Complainant that he would not label her injury as occupational due to her prior back problems. (See EX C at 2.)
6. Because Dr. Wishnuff deemed her injury not work-related, Complainant had to resort to her private insurance to cover her treatment as prescribed by her orthopedic physician, including a back brace, physical therapy, and a TENS machine, but her private insurance either did not cover these treatments or she could not afford the co-pays. (See EX C at 2.)

7. In October 2012, Respondent changed her status from DS to DA and amended its report to the FRA, noting that her accident resulted in a thirty-six day absence from work. (See EX C at 2.)
8. Complainant reported the information in Nos. 1-7 to OSHA on January 8, 2013. (See EX C at 1.)
9. Complainant and Respondent entered into a settlement agreement dated March 26, 2014, releasing Respondent of claims sounding in negligence and medical malpractice and in which Complainant was paid \$14,000 settling the January 8, 2013 OSHA complaint. (See EX D, EX F.)
10. Complainant underwent an IME on December 9, 2014, in which Dr. Fras determined that “any current disability on the part of [Complainant] with regard to her ability to work is as a result of the reported episode on July 16, 2012.” Respondent then changed Complainant’s status from DS to DA. Complainant underwent surgery to correct the problem. (See EX G, EX H, EX Q.)
11. On November 16, 2016, Dr. Wishnuff determined that Complainant was being treated for a non-work-related condition and Respondent changed her status from DA to DS on that day. (See EX J.)
12. Complainant’s labor union requested another IME on Complainant’s behalf. On November 22, 2016, Dr. Yodice authorized a change in her status from DS to DA effective November 18, 2016. (See EX K.)
13. In a report dated April 11, 2017, Dr. Baker determined that Complainant “does not have disabilities or impairment referable to the event of 7/16/12.” (See EX O.)
14. On January 31, 2017, Complainant filed a whistleblower online complaint in which she identified three adverse actions: Dr. Wishnuff’s denial that her injury took place on the job on July 2012; Dr. Wishnuff’s overturning of an IME panel decision in Complainant’s favor in October 2013; and Dr. Wishnuff’s determination that her injury was not work-related in November 2016. (See EX Q.)
15. On June 12, 2017, OSHA found that Respondent’s determination that Complainant’s condition is not job-related constituted a legitimate, non-discriminatory decision in the classification of her injury and found no reasonable cause to believe that Respondent violated FRSA. (See EX R.)

## VII. DISCUSSION

The FRSA allows a complainant to file a complaint with OSHA within 180 days of the alleged violation. See 49 U.S.C. § 20109(d). Complainant filed the complaint at issue with OSHA on January 31, 2017. See EX Q. Therefore, any alleged violations that she became

aware of **prior to July 31, 2017** are untimely pursuant to 49 U.S.C. § 20109(d), unless Complainant can successfully argue that the statute of limitations should be equitably tolled.<sup>2</sup> However, Complainant makes no such argument. In fact, Complainant readily admits that she became aware of Dr. Wishnuff's determination that her injury was not work-related for the first time on July 17, 2012, for the second time in October 2013, and for a third time in November 2016. See EX Q. Complainant does not offer a justification for tolling the statute of limitations and these events occurred outside of the 180-day period. Therefore, even before reaching the merits of these three alleged adverse actions, Complainant is time-barred from bringing these claims.

Even assuming Complainant timely filed these alleged adverse actions, Complainant, as the non-moving party, has failed to set forth specific facts evidencing a genuine issue of material fact in the face of Respondent's arguments. The ARB has articulated a relatively low threshold of what constitutes an adverse action: "Under this standard, the term adverse actions refers to unfavorable employment actions that are more than trivial, either as a single event or in combination with other deliberate employer actions alleged." Williams v. American Airlines, ARB No. 09-018, ALJ No. 2007-AIR-004, slip op. at 17 (Dec. 29, 2010) (internal quotation marks omitted). Ultimately, an employment action is adverse if it "would deter a reasonable employee from engaging in protected activity." Id. at 20.<sup>3</sup> The Board has previously applied this definition of adverse action stated under AIR-21 to FRSA cases.<sup>4</sup> However, this definition does not suggest that every action taken by an employer that renders an employee unhappy constitutes an adverse employment action.

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<sup>2</sup> "Equitable tolling should be applied sparingly and only when exceptional circumstances prevented timely filing through no fault of the plaintiff.... Only exceptional circumstances, not garden variety claim[s] of excusable neglect, allow us to toll the statute of limitations." Bohanon v. Grand Trunk Western Railroad, ARB No. 16-048, ALJ No. 2014-FRS-003, slip op. at 3 (Apr. 27, 2016).

<sup>3</sup> See also Williams, ARB No. 09-018, slip op. at 15, definitively clarifying the adverse action standard in AIR 21 cases:

To settle any lingering confusion in AIR 21 cases, we now clarify that the term "adverse actions" refers to unfavorable employment actions that are more than trivial, either as a single event or in combination with other deliberate employer actions alleged. Unlike the Court in Burlington Northern, we do not believe that the term "discriminate" is ambiguous in the statute. While we agree that it is consistent with the whistleblower statutes to exclude from coverage isolated trivial employment actions that ordinarily cause *de minimis* harm or none at all to reasonable employees, an employer should never be permitted to deliberately single out an employee for unfavorable employment action as retaliation for protected whistleblower activity. The AIR 21 whistleblower statute prohibits the act of deliberate retaliation without any expressed limitation to those actions that might dissuade the reasonable employee. Ultimately, we believe our ruling implements the strong protection expressly called for by Congress.

<sup>4</sup> "Evaluating the respective statutory language of SOX, AIR 21, and FRSA, we conclude that the Williams definition of adverse personnel action also applies to FRSA claims. FRSA, which prohibits discharg[ing], demot[ing], suspend[ing], reprimand[ing], or *in any other way discriminat[ing]* is virtually identical to the relevant broad statutory language in SOX (*in any other manner discriminat[ing]*) and even broader than that of AIR 21." Fricka v. Nat'l Railroad Passenger Corp., ARB No. 14-047, ALJ No. 2013-FRS-035, slip op. at 7 (Nov. 24, 2015) (emphasis added)(internal quotes omitted).

Respondent argues that it did not commit an act that would reasonably dissuade an employee from reporting an on-the-job injury, but instead disagreed that her claimed injury stemmed from the July 2012 incident in violation of 49 U.S.C. § 20109(a). Complainant testified that when she contacted Respondent's insurance company, it told her that it does not cover the particular surgical procedure she sought or cover third party claims. (Tr. at 23.) An employer's insurance company's policy of what it does and does not cover, although it may have rendered Complainant unhappy, does not reasonably deter an employee from reporting an injury. In fact, as Respondent points out, had Complainant not reported her injury, she would not have received full salary and payment of medical benefits for a period of over four years. It was in Complainant's interest to advise Respondent of her injury, not a deterrent.

"An employer should never be permitted to deliberately single out an employee for unfavorable employment action as retaliation for protected whistleblower activity." See footnote 3, supra. Here, Respondent's insurance company communicated a policy that purportedly applies facially and with equal force to all employees seeking the same sort of treatment that Complainant sought. Complainant has not given the undersigned any reason to believe otherwise. She did not even assert that Respondent treated her disparately, as evidenced by her deposition testimony:

Q: Do you believe [Respondent] treat[s] you different than other employees?

A: I wouldn't know. I don't bother with other employees.

Tr. at 38-39.

Therefore, Respondent's insurer's refusal to cover Claimant's medical treatment did not single her out in any sense, let alone do so due to protected activity. Beyond bare assertions that her prior OSHA claims played a role in Respondent's decision to classify her status as not covered by its insurance, Complainant has not put forth any evidence supporting her contention.

Likewise, Respondent did not violate 49 U.S.C. § 20109(c) because it did not commit an adverse action by denying, delaying, or interfering with Complainant's medical treatment stemming from the July 2012 incident. Respondent did quite the opposite by acting promptly. As per Complainant's deposition testimony, her foreman arrived at the scene of Complainant's injury and gave her ice and Tylenol and escorted her to the hospital on that day. (Tr. at 9.) Moreover, Complainant also conceded in her testimony that Respondent did pay for the first of two surgeries. (Tr. at 25.) Although Respondent may not have covered her medical expenses to Complainant's satisfaction, one cannot say that Respondent denied or interfered with her medical treatment when it paid for surgery. Unfortunately for Complainant, her employer-provided health coverage did not cover the second surgery. This fact alone does not constitute an adverse action for the reasons discussed above.

Because Complainant has failed to show that she suffered an adverse action, the undersigned does not need to address whether her protected activity contributed to an adverse action, or whether Respondent would have taken the same action in the absence of her protected activity.

As the burden rests on the moving party, all facts and inferences are construed in the light most favorable to Complainant. However, Complainant cited to nothing more than bare assertions and did not support these assertions with a scintilla of evidence that showed a genuine issue of material fact, namely that her complaints were timely or that she suffered an adverse action.

**ORDER**

Respondent's Motion for Summary Decision is **GRANTED**. The complaint of Carmela Sirois is **DISMISSED**.

SO ORDERED.

**THERESA C. TIMLIN**  
Administrative Law Judge

Cherry Hill, New Jersey

**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](mailto: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).