



Issue Date: 27 November 2018

OALJ Case No.: **2018-FRS-00153**
OSHA Case No.: **3-0050-14-030**

In the Matter of:

LOWELL THOMPSON,
Complainant,

v.

AMTRAK,
Respondent.

ORDER DISMISSING COMPLAINT WITH PREJUDICE

The case of *Duane Siegmann v. Amtrak* was docketed at the Office of Administrative Law Judges on April 18, 2018¹ and it was originally scheduled for hearing on September 20, 2018. At the request of the parties, Administrative Law Judge Carrie A. Bland was appointed as a settlement judge to assist the parties in their effort to resolve the matter between themselves without a hearing. On July 30, 2018, I suspended the formal hearing in the *Siegmann* case, to be rescheduled if necessary after the parties completed settlement negotiations. Since that time, it came to my attention that there was confusion regarding who has a case pending before the Office of Administrative Law Judges. Accordingly, I reopened the *Siegmann* proceeding for the limited purpose of resolving this issue.

Four employees (Duane Siegmann, Christopher Wolff, Lowell Thompson and Michael Thomas) filed complaints with the Occupational Safety & Health Administration (“OSHA”) and were the subjects of an OSHA investigation. All of the complaints were included under a single case number, OSHA Case Number 3-0050-14-030. On February 7, 2018, the Secretary issued findings and a preliminary order that covered all four of the complainants.

Pursuant to 29 C.F.R. § 1982.106(a), a party seeking judicial review of the Secretary’s findings and preliminary order must file objections and a request for a formal hearing within 30 days of receipt of the findings and preliminary order. The objections must be filed in writing with the Office of Administrative Law Judges. These requirements and the address for filing a

¹ Mr. Siegmann explained that he mailed his objection letter by certified mail on March 10, 2018, but the United States Postal Service (“USPS”) returned it to him as undeliverable. Mr. Siegmann also enclosed accompanying USPS tracking information showing that his letter was mailed on March 10, 2018, was properly addressed to the Office of Administrative Law Judges, and was returned to him undelivered on April 13, 2018.

request for a hearing before the Office of Administrative Law Judge were expressly stated in the Secretary's preliminary order.

Mr. Siegmann's case was the only case docketed at the Office of Administrative Law Judges and it was assigned OALJ Case Number 2018-FRS-00056. That case alone was assigned to me to conduct a formal hearing. Nonetheless, the record contained some ambiguity as to whether Mr. Siegmann, proceeding as a self-represented litigant, intended to file objections and a request for a hearing on behalf of not only himself, but also the other three *pro se* complainants involved in the same OSHA investigation. Mr. Siegmann's fax cover sheet dated April 18, 2018 stated, "We do object to OSHA's decision (after 4 years)." Attached to the cover page was the letter signed by Mr. Siegmann alone dated March 10, 2018, that stated, "I object to OSHA's findings in regards to our complaint filed December 16, 2013 (Not December 19, 2013) & would like to request a hearing." Adding to the confusion was the fact that all four of the original complainants were included on the service sheet at the Office of Administrative Law Judges and sent copies of the orders issued so far in *Siegmann v. Amtrak*.

As a result, I issued an order on September 13, 2018 seeking clarification of exactly who had submitted requests for hearings. I directed Christopher Wolff, Lowell Thompson and Michael Thomas to file written responses, within 21 days, addressing whether each individual complainant: (1) objected to the Secretary's findings and preliminary order and requested a formal hearing before the Office of Administrative Law Judges, and (2) believed that equitable tolling considerations applied and justified the filing of such objections and request for a hearing beyond the 30 day period specified in the Secretary's findings and preliminary order.

Lowell Thompson filed his response on September 24, 2018. His response states the following:

To whom it may concern,

I object to OSHA's finding in regard to our complaint filed December 16, 2013 (not December 19, 2013) and would like to request a hearing.

More than 4 years have passed and OSHA has failed to investigate this complaint, as well as several others.

Regards,
Lowell Thompson

Christopher Wolff and Michael Thomas each filed responses on September 27, 2018. Their letters are identical and signed by the respective individual:

To whom it may concern,

I object to OSHA's finding in regard to our complaint filed December 16, 2013 (not December 19, 2013) and would like to request a hearing before the Office of Administrative Law Judges.

The original date for the hearing has been post-posted [sic] until all parties meet for mediation.

Respondent filed its *Motion for Dispositive Action* on October 17, 2018. In its motion, Respondent contends that the complaints of Mr. Wolff, Mr. Thomas, and Mr. Thompson should be dismissed with prejudice because of: (1) a lack of subject matter jurisdiction, (2) their claims, objections, and requests for a hearing are untimely and improper, and (3) that each one of them failed to comply with the order giving them an opportunity to establish that equitable tolling principles apply.

The Administrative Review Board requires that complaints and papers filed by self-represented complainants be construed liberally due to their lack of training in the law and with some degree of adjudicative latitude. *See Trachman v. Orkin Exterminating Co. Inc.*, ARB No. 01-067, ALJ No. 2000-TSC-00003, slip op. at 6 (ARB Apr. 25, 2003). The responses filed by Mr. Wolff, Mr. Thompson and Mr. Thomas do not satisfy the requirements set out in my order, even when construed as generously and liberally as possible. Although each individual filed a timely response to my order and indicated a desire for a formal hearing before the Office of Administrative Law Judges, each one failed to address why equitable tolling principles apply and justify the failure to comply with the filing deadline. This was despite the fact that I explained in the order the principle of equitable tolling, the circumstances in which the Administrative Review Board has found equitable tolling to apply, and I provided a citation to an Administrative Review Board decision that was on point.

Equitable tolling permits modification of limitation periods in certain circumstances. 29 C.F.R. § 1982.106(a) requires a party to file a written objection within 30 days of receipt of the Secretary's findings and preliminary order. In this case, the deadline to object was March 10, 2018. Lowell Thompson filed his response on September 24, 2018, and Christopher Wolff and Michael Thomas each filed a response on September 27, 2018. These dates are far beyond the March 10, 2018 deadline. Without equitable tolling or some other alternative justification for an exception to the deadline, their objections are not timely filed. As the regulation provides, if no timely objection is filed, the Secretary's findings and preliminary order becomes the final decision and is not subject to judicial review. 29 C.F.R. § 1982.106(b). There being no basis stated for applying equitable tolling or other legal principle that might justify the filing of an untimely objection, this case is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

MORRIS D. DAVIS
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).