

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 15 May 2020

Case No.: 2019-FRS-00054
OSHA No.: 6-0150-18-146

In the Matter of:

JEFFREY DAVIS,
Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,
Respondent.

Appearances:

Jeffrey Davis, Pro Se
Ames, Iowa
For the Complainant

David P. Kennison, Esq.
Baird Holm, LLP
Omaha, Nebraska
For the Employer

DECISION AND ORDER GRANTING
RESPONDENT'S MOTION FOR SUMMARY DECISION
AND DENYING COMPLAINT

Procedural History

On September 27, 2018, Jeffrey Davis (“Complainant”) filed a formal complaint with the U.S. Department of Labor (“DOL”), Occupational Safety and Health Administration (“OSHA”), under the employee protection provisions of the Federal Railroad Safety Act of 2007 (“FRSA” or the “Act”), 49 U.S.C. § 20109, alleging that his former employer, Union Pacific Railroad Company (“Respondent” or “Union Pacific”), discriminately applied attendance rules, refused to allow him to promote to the position of engineer, denied him pay and other benefits to which

other similarly situated employees were entitled, removed him from service, and terminated his employment on or about April 20, 2018, all in retaliation for prevailing in an FRSA lawsuit against Respondent in 2015. The complaint was dismissed on March 5, 2019 for a failure to assist in the investigation.

On April 8, 2019, Complainant, through his then retained counsel Jeff Dingwall, Esq., filed objections to the dismissal and requested a hearing before the Office of Administrative Law Judges. The matter was assigned to me on May 16, 2019 and scheduled for hearing.¹

On October 10, 2019, I granted Mr. Dingwall's unopposed *Motion to Withdraw as Counsel for Complainant*, advising Complainant that any newly-retained counsel should file a notice of appearance with this Court. To date, the court has received no notice of appearance filed on behalf of Mr. Davis.

On November 6, 2019, Respondent filed *Motion to Compel Complainant to Respond to Written Discovery and Appear for a Deposition* ("Motion to Compel"). On November 13, 2019, I issued *Order Granting, In Part, Motion to Compel Discovery* ("Order"), requiring Complainant to contact Respondent's counsel in order to schedule a time to be deposed between December 2, 2019 and December 11, 2019. A copy of the Order was sent by certified mail to the address on file for Complainant. It was returned as unclaimed and unable to forward on December 16, 2019. However, it appears Employer did depose Complainant on December 3, 2019.

On December 10, 2019, Respondent filed *Motion for Summary Decision*, with a supporting brief containing a Statement of Undisputed Material Facts, and Exhibits 1 A-N, 2 A-E, 3 A-C, and 4. Respondent submitted that, as Complainant cannot show that any of the decision-makers involved in his termination were aware of his prior lawsuit, he cannot prove as a matter of law that the protected activity was a contributing factor in any of the alleged adverse actions, to include his termination, and the Court should therefore dismiss his complaint.

Complainant did not respond to the *Motion for Summary Decision* but did mail a *Request for Continuance* on December 17, 2019 asking for a continuance of the January 22, 2020 hearing.² In support, Complainant asserted that "I have been unable to acquire an attorney. I have contacted more than 40 attorneys in this matter and they have all said they could not take this case on such a short timeline...Of the more than 40 attorneys I have contacted, about half have said they could take the case if enough time was given to properly prepare for the case." Complainant sought a continuance "until October or November of 2020 as that is the time frame in which most attorneys said they would need to take this case." Respondent filed a response in opposition on December 23, 2019.

¹ The original hearing date of October 17, 2019 was continued twice at the parties' joint request, first to December 12, 2019 and then to January 22, 2020.

² I noted the return address used by Mr. Davis on his continuance request is the same address to which the Order was sent and returned. I reminded Mr. Davis to notify the Court and opposing counsel of any change of address.

By Order issued December 30, 2019, I cancelled the January 22, 2020 hearing and gave Complainant until February 14, 2020 to find and retain new counsel. I informed Complainant that he must advise any newly retained counsel to file a notice of appearance with this Court not later than February 28, 2020. If Complainant was able to retain new counsel, that individual should file a response to Respondent's pending *Motion for Summary Decision* not later than March 31, 2020, or request appropriate relief. If Complainant was not able to retain new counsel, I issued a notice to him on how to respond to the *Motion for Summary Decision*, specifically advising him to file a written response to the *Motion for Summary Decision* and provide some competent evidence to support the fact that Union Pacific personnel who may have taken any of the adverse actions listed above were aware of the prior lawsuit.³ I advised

³ I specifically advised Complainant of the procedures for responding to a motion for summary decision set out in 20 C.F.R. § 18.72:

(c) Procedures –

(1) *Supporting factual positions.* A party asserting that a fact is genuinely disputed must support that assertion by:

(i) Citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for the purposes of the motion only), admissions, interrogatory answers, or other materials; or

(ii) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact

* * * * *

(4) *Affidavits or declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) *When facts are unavailable to the nonmovant.* If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the judge may:

- (1) Defer considering the motion or deny it;
- (2) Allow time to obtain affidavits or declarations or to take discovery;
- (3) Issue any other appropriate order.

(e) *Failing to properly support or address a fact.* If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by paragraph (c) of this section, the judge may:

- (1) Give the party an opportunity to properly support or address the fact;
- (2) Consider the fact undisputed for purposes of the motion;
- (3) Grant summary decision if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or
- (4) Issue any other appropriate order.

Complainant if he failed to present such evidence establishing that there is a genuine issue of material fact, summary decision may be entered, which meant that his case could be dismissed without a hearing.⁴ Complainant must have received my December 30, 2019 Order because, on February 27, 2020, he filed *Request to deny Union Pacific summary judgement* (sic).⁵ Respondent filed *Reply Brief in Support of Motion for Summary Decision* on March 6, 2020.

As I find Complainant has presented no evidence establishing that any of the decision-makers were aware of the prior lawsuit before taking any of the alleged adverse actions in this case, he cannot prove it was a contributing factor, an essential element of his claim, and I therefore grant Respondent's motion for summary decision.

Discussion

Findings of Fact⁶

1. Complainant Jeffrey Davis worked as a conductor for the BNSF and Canadian Pacific Railroads from 1996 to 2005.
2. Respondent Union Pacific Railroad Company hired Complainant on April 7, 2007, where he worked as a brakeman/conductor in Boone, Iowa. Complainant was furloughed on December 16, 2008 and brought back to duty with Respondent on June 7, 2010, and transferred to Shreveport, Louisiana.

⁴ As a self-represented complainant apparently lacking legal expertise, this Court has afforded Mr. Davis "a degree of adjudicative latitude" as it relates to the motion for summary decision. *Hyman v. KD Resources, Inc., et al.*, ARB No. 09-076, ALJ No. 2009-SOX-020, slip. op. at 8 (ARB Mar. 31, 2010) (citing *Ubinger v. CAE Int'l*, ARB No. 07-083, ALJ No. 2007-SOX-036, slip op. at 6 (ARB Aug. 27, 2008)); see also *Hukman v. U.S. Airways, Inc.*, ARB No. 2018-0048, ALJ No. 2015-AIR-00003 (ARB Jan. 16, 2020) (ALJ should not place limits on the means of proof a complainant may use to respond to a respondent's motion).

⁵ Complainant's submission is 2 and ½ pages in which he describes receiving a medical leave of absence in June 2016 for dental implant surgery while still stationed in Shreveport, Louisiana. Complainant states he was harassed and investigated for absenteeism, for which he was exonerated. He also avers that during this period he was investigated for not reporting to work 2 hours after receiving a phone call, even though he had received a jury summons that required all electronic devices to be powered off and was therefore unable to respond. In March 2017, he was denied Family and Medical Leave for an Americans with Disabilities Act protected disease, for which he was prescribed hydrocodone, an opioid. While Union Pacific policy prohibits employees to report for duty while under the influence of controlled substance, Complainant alleges he was forced to work while taking medication for his ADA protected disease.

Treating this document as a declaration by a self-represented litigant, nothing in it addresses the core element of whether Union Pacific personnel were aware of Complainant's prior lawsuit when they took the adverse actions alleged in this case, to include Complainant's 2018 termination, failure to promote, and denial of pay and benefits. In other words, Complainant makes no reference to and does not allege that the decision-makers had knowledge of his prior lawsuit, and presents no facts, makes no assertions, and offers no evidence from which this court may infer that those decision-makers were aware of the prior lawsuit, such that it may have been a contributing factor in the adverse actions.

⁶ As Complainant failed to object to or properly address Respondent's Statement of Undisputed Material Facts set forth in pages 2-11 of its *Motion for Summary Decision*, I consider the facts undisputed for purposes of this motion. 29 C.F.R. § 18.72(e)(2).

3. Complainant injured his ankle in July 2010; he was fired on August 13, 2010.
4. On or about December 1, 2010, Complainant filed a complaint with OSHA, alleging he was terminated for reporting a work-related injury, in violation of the employee protection provisions of the FRSA.
5. When no decision was forthcoming from DOL, Complainant filed an action in United States District Court for the Western District of Louisiana on or about October 22, 2012, pursuant to the “kick-out” provisions set forth in 49 U.S.C. § 20109(d)(3).⁷ Following a two-day jury trial, a final judgment was issued on July 21, 2015, awarding Complainant the sum of \$375,000.00, and ordering his reinstatement.⁸
6. Respondent reinstated Complainant on November 16, 2015, where he was again based in Shreveport, Louisiana.
7. Respondent transferred Complainant to Longview, Texas on March 20, 2017. While in Texas, Complainant was investigated on three occasions for attendance violations. The first investigation covered the period March 14, 2017 through June 12, 2017; the second investigation covered the period September 13, 2017 through December 12, 2017; and the third investigation covered the period December 27, 2017 through March 28, 2018.
8. General Superintendent Daniel Torres was the deciding official for all three investigations and sustained the charges of violating Respondent’s attendance policies. The chart below reflects the date the investigation letter was issued to Complainant, the period covered, Complainant’s absentee rate for the period investigated, and the date Torres issued his decision letter.

Date Investigation Letter Issued	Period Reviewed	Absentee Rate	Date Decision Letter Issued
6/19/2017	3/14/2017-6/12/2017	18%	7/6/2017 first offense
12/18/2017	9/13/2017-12/12/2017	29%	1/5/2018 second offense
4/2/2018	12/27/2017-3/28/2018	30%	4/20/2018 third offense

⁷ Under the enforcement provisions of the Act, if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint, and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. 49 U.S.C. § 20109(d)(3); 29 C.F.R. § 1982.114. Here, nearly 700 days had passed from the time Complainant initially filed his OSHA complaint and the date he filed his district court action.

⁸ Case No. 5:12-cv-02738-DEW-MLH.

9. A first offense violation of Respondent's attendance policy remains on an employee's record for 36 months. If no further attendance violations occur, it is expunged. A third offense committed during the 36-month period following a second offense can result in dismissal.
10. Given the three violations, and consistent with Respondent's attendance policies, Torres terminated Complainant's employment on April 20, 2018. The termination was based solely on the attendance violations. At the time of termination, Torres was not aware of Complainant's 2012 federal court lawsuit, or that he had prevailed in 2015.
11. No Union Pacific employee involved in the investigation of or decision to discipline Complainant for attendance violations in 2017 and 2018 was aware of the 2012 lawsuit, or the outcome, before September 27, 2018.
12. Complainant has presented no evidence that any Union Pacific employee responsible for making decisions affecting Complainant's promotion, pay, time off, and other benefits between March 20, 2017 and April 20, 2018, was aware of the 2012 lawsuit, or its outcome.
13. On September 27, 2018, Complainant filed a second complaint with OSHA, also under the employee protection provisions of the FRSA, alleging Respondent discriminately applied attendance rules, refused to allow him to promote to the position of engineer, denied him pay and other benefits to which other similarly situated employees were entitled, removed him from service, and terminated his employment on or about April 20, 2018 - all in retaliation for prevailing in his 2012 lawsuit.⁹

Legal Standard

A railroad carrier may not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee if such discrimination is due, in whole or in part, to the employee's filing of a complaint under the FRSA. 29 C.F.R. § 1982.102(b)(1)(iii).

The current version of the FRSA provides that whistleblower complaints shall be governed by the legal burdens of proof set forth in the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), 49 U.S.C. § 42121(b)(2)(B)(i). 49 U.S.C. § 20109(d)(2)(A)(i). Under the AIR 21 standard, complainants must initially prove by a preponderance of the evidence that a protected activity was a contributing factor in the unfavorable personnel action alleged in the complaint. *Yowell v. Fort Worth & Western R.R.*, ARB No. 2019-0039, ALJ No. 2018-FRS-00009, slip op. at 5 (ARB Feb. 5, 2020). If a complainant makes this showing, an employer can avoid liability by demonstrating with clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the protected behavior. 49 U.S.C. § 42121(b)(2)(B)(ii).

⁹ This is the complaint at issue in these proceedings.

Consequently, in order to meet her burden of proving a claim under the FRSA, Complainant must prove by a preponderance of the evidence that: (1) he engaged in protected activity, (2) Respondent knew of the protected activity, (3) he suffered an unfavorable personnel action, and (4) such protected activity was a contributing factor in the unfavorable personnel action.¹⁰ *See, e.g., Thompson v. BAA Indianapolis LLC*, ALJ No. 2005-AIR-00032 (ALJ Dec. 11, 2007). A “contributing factor” includes “any factor which, alone or in combination with other factors, tends to affect in any way the outcome of the decision.” *Powers v. Union Pac. R.R. Co.*, ARB No. 13-034, ALJ No. 2010-FRS-00030, slip op. at 11 (Jan. 6, 2017) (internal citations omitted).

Summary Decision Standard

Under 29 C.F.R. § 18.72(a), an administrative law judge may enter summary decision for either party “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 genuine issue of material fact is one that, if resolved, could establish an element of a claim or defense and therefore affect the outcome of the litigation. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). No genuine issue of material fact exists when the “record taken as a whole could not lead a rational trier of fact to find for the non-moving party.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The party moving for summary decision has the burden of establishing the “absence of evidence to support the nonmoving party’s case.” *Celotex*, 477 U.S. at 325. The burden then shifts to the nonmoving party, who “must do more than simply show there is some metaphysical doubt as to the material facts and must come forward with specific facts showing there is a genuine issue for trial.” *Hess v. Union Pac. R.R.*, 898 F.3d 852, 857 (8th Cir. 2018) (internal citations omitted). In reviewing a motion for summary decision, I must view all evidence in the light most favorable to the nonmoving party.

When a respondent moves for summary decision on the grounds that a complainant lacks evidence of an essential element of his claim, the complainant is required under 29 C.F.R. Part 18 to present some evidence demonstrating the existence of a genuine issue of material fact. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). A “genuine issue exists when the **nonmoving party produces sufficient evidence of a material fact so that a factfinder is required to resolve the parties’ differing versions at trial.**” *Reddy v. Medquist, Inc.*, ARB No.

¹⁰ Although I list the knowledge requirement as a separate element, I note the ARB has repeatedly reiterated that there are only three essential elements to an FRSA whistleblower case – protected activity, adverse action and causation, and that the final decision-maker’s “knowledge” and “animus” are only factors to consider in the causation analysis. *See Hamilton v. CSX Transportation, Inc.*, ARB No. 12-022, ALJ No. 2010-FRS-25, slip op. at 3 (ARB Apr. 30, 2013); *see also Coates v. Grand Trunk Western Railroad Co.*, ARB No. 14-019, ALJ No. 2013-FRS-3, slip op. at 2 fn. 5 (ARB July 17, 2015) (knowledge is not a separate element but instead forms part of the causation analysis). It is noted, however, that Federal court FRSA precedent tends to view the decision-maker’s knowledge of the protected activity as a distinct element of a whistleblower claim, *see, e.g., Lincoln v. BNSF Ry. Co.*, 900 F.3d 1166, 1213 (10th Cir. Aug. 17, 2018), joining “those courts that have concluded an FRSA plaintiff advancing a retaliation claim must demonstrate the decision-maker had knowledge of the protected activity.” (citing *Conrad v. CSX Transp., Inc.*, 824 F.3d 103, 107-08 (4th Cir. 2016)); *Kuduk v. BNSF Ry. Co.*, 768 F.3d 786, 791 (8th Cir. 2014); *Koziara v. BNSF Ry. Co.*, 840 F.3d 873, 878 (7th Cir. 2016); *Head v. Norfolk S. Ry. Co.*, 2017 WL 4030580, at *16 (N.D. Ala. Sept. 13, 2017) (citing in turn, an Eleventh Circuit decision); *Cyrus v. Union Pac. R.R. Co.*, 2015 WL 5675073, at *10 (N.D. Ill. Sept. 24, 2015)).

04-123, ALJ No. 2004-SOX-035, slip op. at 4 (ARB Sept. 30, 2005) (emphasis added). At the summary decision stage, a complainant's failure to come forward with some evidence as to each element of the offense is fatal to his or her case.

Conclusions of Law

At this stage of the proceedings, Complainant bears the burden to come forward with some evidence that the Respondent personnel involved in the decision to terminate him on April 20, 2018 knew or had reason to believe that he had previously filed and won a whistleblower complaint against Respondent years earlier. Despite being given ample occasion to do so, nothing in the current record satisfies Complainant's burden to produce such affirmative evidence and not simply rely on his initial complaint or subjective belief. *Lenzen v. Workers Comp. Reinsurance Ass'n*, 705 F.3d 816, 821 (8th Cir. 2013) (an employee's subjective belief not evidence of intentional discrimination).

I find Complainant has failed to provide any evidence that any Union Pacific personnel involved in any of the adverse actions alleged had actual or constructive knowledge that he had been involved in a prior lawsuit against Respondent, or its results. Proof of such knowledge is an essential element of his case and Complainant cannot prevail in a retaliation case when there is no evidence that the decision-makers were aware of the alleged protected activity, here the 2012 lawsuit. *Kuduk v. BNSF Ry. Co.*, 768 F.3d 786, 791 (8th Cir. 2014).

I provided Complainant with a fair opportunity to develop evidence that could support a finding that the decision-makers were aware of his prior lawsuit, the sole protected activity he has alleged here. Speculation and innuendo are insufficient to satisfy the requirement to develop and present evidence that could establish Respondent personnel involved in the decisions to terminate his employment, not promote him, and not grant him leave were aware of the prior lawsuit. Simply put, if no one had such knowledge, then Complainant cannot establish that the prior lawsuit was a contributing factor in the adverse actions.

I have carefully read Complainant's deposition and reviewed every document and exhibit offered by the parties relating to the motion for summary decision. Nowhere does Complainant suggest that anyone was aware of the prior lawsuit and his February 27, 2020 filing contains no argument or factual narrative that any Union Pacific personnel involved in the alleged adverse actions taken against him, to include his April 20, 2018 dismissal, were aware of the 2012 lawsuit, what it alleged, or even its results.

At the summary decision stage, Complainant bears the burden to come forward with some evidence that the decision-makers were actually aware, or had reason to suspect, that Complainant engaged in activity protected under the Act, here the prior 2012 retaliation complaint and subsequent federal lawsuit. Nothing in the record now before me satisfies this burden. There is simply no evidence that persons involved in Respondent's termination, or other potential adverse actions, knew or should have known that Complainant had filed and prevailed in an FRSA lawsuit against Union Pacific years earlier. Proof of that knowledge is an essential element of this FRSA complaint and, absent such evidence, the retaliation claim must fail. *Smith-Bunge v. Wisconsin Cent. Ltd.*, 946 F.3d 420, 424-25 (8th Cir. 2019).

Regarding Respondent's contributing factor burden, my role is not to question whether the three investigations for attendance violations were fair or to determine whether Respondent's decision to fire Jeffrey Davis was wise or based on sufficient "cause" under Union Pacific's personnel policies. It may have been unfair, unwarranted, and excessive. Complainant may even have had good reasons for why he laid off and missed multiple shifts. However, none of this is relevant to the narrow issue before me of whether, looking at all the evidence, the 2012 lawsuit could have contributed at all to Respondent's decision to take any of the adverse actions alleged.¹¹ Given Complainant's failure to present any evidence of the decision-makers knowledge of the lawsuit, I find it could not. Accordingly,

ORDER

Respondent's Motion for Summary Decision is GRANTED.¹² The Complaint is DENIED.¹³

SO ORDERED:

STEPHEN R. HENLEY
Chief 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.¹⁴

¹¹ The FRSA does not forbid unfair employment actions; it forbids retaliatory ones. *See, e.g., Collins v. Am. Red Cross*, 715 F.3d 994, 999 (7th Cir. 2013); *Brown v. Advocate S. Suburban Hosp.*, 700 F.3d 1101, 1106 (7th Cir. 2012).

¹² That part of Respondent's motion requesting the award of attorney's fees and costs is DENIED.

¹³ 29 C.F.R. § 1982.109(d)(2) requires denial of the complaint rather than dismissal when the ALJ determines the respondent did not violate the FRSA.

¹⁴ Due to the Coronavirus ("COVID-19") pandemic, the Administrative Review Board ("ARB") is experiencing delays in the processing of appeals and documents received by mail. To avoid delay, the ARB is encouraging all parties to utilize the EFSR system to file appeals, motions, briefs, and all other case-related documents to ensure the timely processing of their appeals. Documents that are not filed through the EFSR portal may be delayed in

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.

processing. Documents filed through the EFSR portal should not be submitted in paper, unless specifically requested. Information regarding registration for access to the EFSR system, as well as links to the step-by-step user guide and FAQs can be found at <https://dol-appeals.entellitrak.com>.

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 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 accepted the case for review. *See* 29 C.F.R. §§ 1982.110(a) and (b).