



Issue Date: 31 January 2020

Case No.: 2019-FRS-00046
OSHA Case Nos. 5-2210-19-007

In the Matter of:

NICHOLAS INGRODI,
Complainant,

v.

CSX TRANSPORTATION, INC.,
Respondent.

**DECISION AND ORDER GRANTING RESPONDENT'S
MOTION FOR SUMMARY DECISION**

This matter arises under the employee protection provisions of the Federal Rail Safety Act, 49 U.S.C. § 20109 (the “Act”), as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, and Section 419 of the Rail Safety Improvement Act of 2008 (the “Improvement Act”), Pub. L. No. 110-432, and the regulations issued at 29 C.F.R. Part 1982.

PROCEDURAL HISTORY

Nicholas Ingrodi (“Complainant”) timely filed a complaint against CSX Transportation, Inc. (“Respondent”) on November 5, 2018, alleging that he was fired in violation of the Act for “refusing to work when his medical condition prevented him from being able to safely do so.” In response to his complaint, the Secretary conducted an investigation through the Regional Administrator for the Occupational Safety and Health Administration (“OSHA”). On February 28, 2019, the Secretary dismissed the complaint, finding that Complainant did not engage in any protected activity. The Secretary stated, “Complainant was under doctor’s orders and under restrictions, for a condition that was not related to a work-related injury or illness. Consequently, this complaint is dismissed.”

On March 4, 2019, Complainant objected to the Secretary’s findings and requested a formal hearing. On September 26, 2019, I set a hearing for January 8, 2020, in Cumberland, Maryland. Respondent filed a Motion to Continue the Hearing and All Other Case Deadlines by 50 Days on October 4, 2019. On October 16, 2019, Respondent filed the parties’ Stipulated Protective Order.

On November 22, 2019, Respondent filed its Motion for Summary Decision (“Res. Motion”), along with its Memorandum in Support of Respondent’s Motion for Summary Decision (“Res. Mem.”), and exhibits marked “Ingrodi’s Deposition” (“Ingrodi Dep.”) and “Ingrodi’s Deposition Exhibits” (“Dep. Ex.”) 1-13.

On December 9, 2019, I held a conference call with counsel for the parties. During that call, we discussed the status of this matter, whether pending discovery issues affected Complainant’s ability to Respondent’s Motion for Summary Decision, and possible hearing dates. At the end of the call, I set a briefing schedule on the Motion for Summary Decision and noted that, should it be necessary to set this matter for hearing after I rule on the Motion for Summary Decision, I would schedule a conference call to set the hearing date.

On December 18, 2019, Complainant timely filed its Response to Respondent’s Motion for Summary Decision (“C. Response”) along with Complainant’s Declaration (“C. Dec.”). On December 20, 2019, Respondent filed its Reply in Support of Its Motion for Summary Decision (“Res. Reply”). Upon review of the parties’ briefs and evidence, I grant Respondent’s Motion for Summary Decision.

UNDISPUTED FACTS

Respondent is a railroad carrier engaged in interstate commerce within the meaning of the Act. Res. Mem. at 2. Complainant began working for Employer as a conductor in June 2011. *Id.* A collective bargaining agreement (“CBA”) governed his employment and he was represented by the Sheet Metal Air Rail Transportation (“SMART”) union. Ingrodi Dep. at 65. Pursuant to the terms of the CBA, any discipline brought against Complainant by Respondent had to be based only on evidence offered at a formal investigation/internal hearing. C. Dec. 1.

During 2017 and 2018, Complainant worked in the Baltimore Division where he would be called to complete a round trip from Cumberland to Baltimore. Ingrodi Dep. at 10-13. Once he completed his trip, Complainant would move to the bottom of a list, and then move-up the list as other conductors ahead of him finished their trips. *Id.* at 13. When it was Complainant’s time to work, he would receive a call from management telling him to report to work within three hours of the call. *Id.* at 14. Complainant would report to work, check work orders and any bulletins the Respondent issued via computers in the crew room. *Id.* at 15. Respondent provided its employees an application, “CrewLife,” where they could access attendance records via personal phones. *Id.* at 16.

Respondent uses a Crew Attendance Point System (“CAPS”) to assess points for various attendance incidents. Dep. Ex. 2. Points accumulate and result in discipline each time the point total is equal or greater than twenty. *Id.* An employee will be subject to “progressive handling” once the employee reaches the twenty point threshold. *Id.* at 2. The progressive handling begins with a counseling letter at Step 1; followed by a second counseling letter at Step 2, a formal reprimand (subject to CBA discipline procedures) at Step 3, and finally, dismissal (also subject to CBA discipline procedures) at Step 4. Dep. Ex. 2. Following each “handling,” ten points are deducted from the employee’s point total. *Id.*

Points are accumulated based on the appropriate “attendance incident” and its corresponding “point value.” *Id.* Attendance incidents are divided into five categories: missed call; unauthorized and unavailable full or partial day; a sick—without valid medical documentation; sick—with valid medical documentation (subject to the Medical Review Process described in the following paragraph); and hospitalization or emergency treatment—with valid medical documentation. *Id.* A missed call incident is subject to ten points per day, Monday through Sunday. *Id.* An unauthorized and unavailable full or partial day incident is subject to four points per day, Monday through Thursday, and six points per day, Friday through Sunday. *Id.* A sick—without valid medical documentation incident is subject to four points per day, Monday through Thursday, and six points per day, Friday through Sunday. *Id.* A sick—with valid medical documentation incident is subject to three points per day, Monday through Sunday. *Id.* A hospitalization or emergency treatment—with valid medical documentation incident is subject to zero points. *Id.*

Employees can mark off sick by either calling crew call (“CMC”) or using the CrewLife Application. Ingridi Dep. at 29. Respondent does not know the reason for the sickness or what symptoms are present when employees mark off until documentation is sent to its Medical Department. *Id.* at 29-30.

Employees who are absent due to illness or medical emergency may submit medical documentation to Respondent’s Medical Department; if the employee elects to submit documentation, the employee must do so within three calendar days from the last day of the medical absence. Dep. Ex. 2. Any documentation submitted should include, at a minimum, the employee’s name, date of onset of injury/illness and the health care provider’s name, contact information and signature. *Id.* If the employee alleges the absence was due to a hospitalization or emergency treatment, “the employee must provide sufficient medical information from the treating healthcare provider to help [Respondent] determine whether such absence should be excused.” *Id.* Once an employee submits medical documentation, Respondent’s Medical Department will review it and assess the circumstances on the individual merits of each situation. *Id.* Following this review, the Medical Department advises the Crew Management Center as to whether to assess any points. *Id.*

Good attendance is also rewarded under CAPS; three points are deducted from an employee’s total for every calendar month the employee has no attendance incidents except for certain enumerated exceptions. *Id.*

In 2017, Complainant had several attendance issues; he received Step 2 discipline on June 24, 2017, and Step 3 discipline on August 26, 2017. Ingridi Dep. at 25-26. Following the August 26, 2017 discipline, Complainant’s attendance points were reduced to twelve points. *Id.* at 33-34. Complainant was aware that he was on the last step and would be terminated if he reached beyond twenty points. *Id.* at 35.

On February 5, 2018, Complainant marked off sick to take his then-girlfriend to a doctor’s appointment. *Id.* at 39-42, 62. He did not remember whether he called CMC or used the CrewLife App. *Id.* at 42. However, he did remember that he only marked off sick and did not provide Respondent any additional information. *Id.* Based on the circumstances,

Respondent considered this absence as an “unexcused absence” and added 4 points to Complainant’s total points. *Id.* at 44.

Complainant sought medical treatment at MedExpress LaVale on March 16, 2018. Dep. Ex. 2. Complainant was treated by PA Alice Brown. PA Brown completed a “Medical Excuse Form” that stated, “He/She may return to work/school/gym on 3/19/18.” *Id.* No other information, restrictions, or instructions are provided. The form was signed by PA Brown on March 19, 2018. *Id.*

On March 17, 2018, Complainant marked off sick. Ingrodi Dep. at 45-47. He did not remember whether he called CMC or used the CrewLife App, but remembered that he only marked off and did not provide Respondent with any additional information. *Id.* at 46-47. Respondent determined this absence was a non-emergency, non-work-related medical event and assessed 3 additional points to Complainant, raising his point total to 19. *Id.* at 54.

On April 14, 2018, Complainant marked off sick because he had the flu and was experiencing vomiting and diarrhea. *Id.* at 57, 59. Complainant admitted that this absence was not a work-related illness. *Id.* at 59. He did not remember whether he called CMC or used the CrewLife App, but remembered that he only marked off and did not provide Respondent with any additional information. *Id.* at 55-59. He also remembered that he marked off before going to the doctor. *Id.* at 57.

Complainant sought medical treatment at the Western Maryland Health System’s Emergency Department on April 14, 2018. *Id.* Complainant was treated by Dr. Rameen Shafiei. Dr. Shafiei completed a “School/Work Release” form that stated the following:

TO WHOM IT MAY CONCERN:

Patient was seen in this emergency room on 04/14/18
Reason: ILLNESS

INGRODI, NICHOLAS L will be able to return to WORK on 04/16/18.

Restrictions upon return:

The form was signed by Dr. Shafiei on April 14, 2018, and was faxed to 19042453056 on April 16, 2018. Dep. Ex. 2.

Following a review, Respondent assessed 3 additional points to Complainant, raising his point total to 22. Ingrodi Dep. at 57. As a result, Complainant reached “Step 4 Dismissal” under the CAPS policy, and Respondent issued him a notice of a formal investigation on April 23, 2018. Dep. Ex. 2. The notice informed Complainant to attend an investigation on April 26, 2018, to develop the facts regarding him reaching or exceeding the threshold under CAPS. *Id.* The investigation was postponed three times and was finally rescheduled for June 27, 2018. *Id.*

A formal investigative hearing was held on June 27, 2018. Dep. Ex. 1. Complainant testified that he believed his symptoms on April 14 would have affected his work and been a danger to himself and/or coworkers; however, he did not describe his symptoms. *Id.* Complainant's girlfriend also testified at the hearing. She stated, "[H]e was unable to . . . drive himself to the hospital . . . so I don't think it would have been able for him to come in and operate a train or have anybody else's, you know, life in his hands." *Id.* Following the hearing, Respondent terminated Complainant for violating its attendance policy on July 26, 2018. Dep. Ex. 5.

STANDARD OF REVIEW

The standard for summary decision, as outlined in 29 C.F.R. § 18.72, is analogous to the standard developed under Rule 56 of the Federal Rules of Civil Procedure for summary judgment. *Frederickson v. The Home Depot U.S.A., Inc.*, No. 07-100, slip. op. at 5 (ARB May 27, 2010). Summary judgment is designed "to isolate and dispose of factually unsupported claims or defenses." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). On review of a motion for summary judgment, a court must consider the facts in the light most favorable to the non-movant, drawing all reasonable inferences in the non-movant's favor. *Smith v. City of Wyoming*, 821 F.3d 697, 706 (6th Cir. 2016). Such evidence is broad in scope, but the mere pleadings themselves are not sufficient to support or rebut a motion for summary decision. *Celotex Corp.*, 477 U.S., at 324.

An administrative law judge may enter summary decision if the pleadings, affidavits, materials obtained by discovery, or other materials establish that there is no genuine dispute as to *any* material fact, and that the movant is entitled to summary decision. 29 C.F.R. § 18.72; *Mara v. Sempra Energy Trading, LLC*, No. 10-051, slip op. at 5 (ARB Jun. 28, 2011). An issue is a genuine issue of material fact if its resolution "could establish an element of a claim or defense and, therefore, affect the outcome of the action." *Frederickson*, slip op. at 5 (citing *Celotex Corp.*, 477 U.S., at 323-24).

The movant bears the burden of establishing the absence of a genuine issue of material fact. *Celotex Corp.*, 477 U.S., at 323. Additionally, upon motion, summary decision may be entered against any party who, after adequate time for discovery, "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Smith*, 821 F.3d, at 706 (citing *Celotex Corp.*, 477 U.S., at 322). Thus after the movant argues an absence of evidence supporting the non-movant's position, the burden shifts to the non-movant to prove the existence of that genuine issue of material fact. *Mara*, slip op. at 5; *Frederickson*, slip op. at 6.

Complainant alleges that he was terminated in violation of 49 U.S.C. § 20109(b) and 20109(c)(2). Complainant argues that the "[Act's] plain language protects employees who report hazardous conditions, refuse to work when they are confronted by such conditions, and/or follow doctors' orders." C. Response at 6. Complainant contends since he sought medical treatment because he was ill and his doctor opined that such illness prevented him from safely performing his job's essential functions, he engaged in protected activity by marking off from work. *Id.* Respondent claims Complainant did not engage in protected activity under § 20109(b) because

he never reported a hazardous railroad safety or security condition or refused to work when confronted by a hazardous safety or security condition. Res. Mem. at 10. Moreover, Respondent insists that Complainant did not engage in protected activity under § 20109(c) because he never reported a work-related injury. *Id.* at 12.

DISCUSSION

The Act’s investigatory proceedings are governed by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121 (“AIR 21”). 49 U.S.C. § 20109(d)(2). AIR 21 establishes the complainant’s burden of proof at different stages of the administrative process. Complainant must prove, by a preponderance of the evidence, that: (1) the complainant engaged in a protected activity under the Act; (2) the respondent subjected the complainant to an adverse action; and (3) the complainant’s protected activity was a contributing factor in that adverse action. *Hoffman v. Solis*, 636 F.3d 262, 267-68 (6th Cir. 2011). Failure to establish any one of these elements necessitates a dismissal of the complainant’s claim. *Johnson v. BNSF Ry. Co.*, No. 14-083, slip op. at 3 (ARB Jun. 1, 2016). Should these facts be proved, a respondent may still prevail if it establishes, by clear and convincing evidence, that it would have taken the same adverse action regardless of the complainant’s protected activity. *Hoffman*, 636 F.3d, at 268; *see also Menefee v. Tandem Transp. Corp.*, No. 09-046, slip op. at 6 (ARB Apr. 30, 2010) (citing *Brune v. Horizon Air Indus. Inc.*, No. 04-037, slip. op. at 13 (ARB Jan. 31, 2006)).

I. SECTION 20109(c) CLAIM

The Federal Rail Safety Act exists “to promote safety in every area of railroad operations.” 49 U.S.C. § 20101. Section 20109(c) states:

(1) Prohibition—

A railroad carrier or person covered under this section may not deny, delay, or interfere with the medical or first aid treatment of an employee who is injured during the course of employment

(2) Discipline—

A railroad carrier or person covered under this section may not discipline . . . an employee for requesting medical or first aid treatment, or for following orders or a treatment plan of a treating physician

Respondent cites to several cases where courts have held that subsection (c)(2) only prohibits an employer from disciplining an employee for following doctor’s orders for injuries or illnesses suffered “during the course of employment.” Res. Reply at 2; *see Port Auth. Trans-Hudson v. Sec’y, Dep’t of Labor [Bala]*, 776 F.3d 157 (3rd Cir. 2015); *Grand Trunk W. RR. Co. v. U.S. Dep’t of Labor*, 875 F.3d 821, 827 (6th Cir. 2017); *Goad v. BNSF Ry. Co.*, No. 15-560, 2016 WL 7131597 (W.D. Mo. March 2, 2016); *Stokes v. CSX Transportation*, 2014-FRS-00051 (ALJ Apr. 9, 2015). Complainant argues that the cases cited by Respondent “were wrongly decided” and ignore the statute’s “plain language” that compels a finding that subsection (c)(2) covers all injuries and illnesses. C. Response at 7.

Upon review of the case law on this matter, I agree with Respondent that subsection (c)(2) implicitly incorporates the limitation in subsection (c)(1), and that (c)(2) therefore only prohibits an Employer from disciplining an employee for following a doctor's orders for injuries or illnesses suffered "during the course of employment." See *Bala*, 776 F.3d at 163. I similarly adopted this reasoning in *Przytula v. Grand Trunk Western Railroad Co.*, where an engineer was terminated after he followed doctors' orders and missed five days of work between July 2013 and August 2013 due to illnesses not related to any injuries suffered during the course of employment. *Przytula v. Grand Trunk Western Railroad Co.*, 2014-FRS-00117, slip. op. at 2 (ALJ Nov. 14, 2016). I denied his complaint because it fell outside of the Act. *Id.* at 4.

The Administrative Review Board reviewed *Przytula* and agreed that the subsection only prohibits an employer from retaliating against an employee for following a doctor's orders when those orders relate to an illness or injury that occurred "during the course of employment." *Przytula*, 2014-FRS-00117, slip op. p. 6 (ARB Sep. 26, 2019). It is undisputed that Complainant's illness did not occur during the course of, and in no way was related to, his employment. Ingrodi Dep. at 59. Accordingly, this complaint falls outside the Act, and is **DENIED**.¹

II. SECTION 20109(b)(1) CLAIMS

Section 20109(b)(1) in part states:

Hazardous safety or security conditions. (1) A railroad carrier . . . shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee for (A) reporting, in good faith, a hazardous safety or security condition; (B) refusing to work when confronted by a hazardous safety or security condition

Complainant asserts that Respondent violated both § 20109(b)(1)(A) and 20109(b)(1)(B) for terminating his employment for excessive absences when he marked off sick on April 14, 2018. C. Response at 6. Complainant testified that he had the flu and was either reporting a hazardous railroad safety condition or refusing to work when confronted by a hazardous safety condition. Ingrodi Dep. at 59; Dep. Ex. 6, 10. Respondent states that Complainant's argument lacks merit because it "has been routinely rejected." Res. Mem. at 10. In doing so, Respondent cites to several cases. *Id.*; Res. Reply at 3-4.

One of the cases cited by Respondent is *Winch v. Dir., OWCP*, an Eleventh Circuit decision where the court held that the plaintiff did not engage in protected activity because he only marked off sick and did not report that anything prevented him from safely performing his job's essential functions or that he was reporting a hazardous condition. *Winch v. Dir., OWCP*, 725 F. App'x 768, 769 (11th Cir. 2018).

Complainant attempts to distinguish his case from *Winch* by focusing on his actions at the internal hearing. Specifically, Complainant testified that he was not only sick on April 14, 2018,

¹ 29 C.F.R. § 1978.109(d)(2) provides that "[i]f the ALJ determines that the respondent has not violated the law, an order will be issued denying the complaint."

but also that such illness prevented him from safely performing his job’s essential functions. C. Res. at 3. Additionally, he provided Respondent a doctor’s note from that date in an attempt to excuse this absence. *Id.* at 7. In doing so, Complainant suggested that these actions satisfied the reporting requirements as set forth in § 20109(b)(1)(C).

The issue with Complainant’s argument is that he fails to address the initial inquiry—does a personal illness qualify as “a hazardous safety or security condition” under the Act? Instead, Complainant’s argument skips this inquiry and focuses on whether his actions and evidence at the internal hearing meet the reporting requirements set in § 20109(b)(1)(C).

Similarly in *Winch*, both the Eleventh Circuit and the Administrative Review Board failed to address whether reporting one’s own illness can qualify as reporting a hazardous condition. *See Winch*, 725 F. App’x at 771-72 (opting not to opine whether calling in to report one’s own illness can qualify as “reporting . . . a hazardous . . . condition.”).² Instead, both focused on whether the engineer’s actions put his employer on notice that he was attempting to trigger the hazardous-condition provision as opposed to simply requesting a sick day.

Respondent addressed this “hazardous condition inquiry” within its Reply by citing several federal, state, and ALJ decisions and orders where courts have limited § 20109(b)(1) protections to only work-related safety conditions. *See Bala* (holding “subsection (b)(1)(A) must be read having at least some work-related limitation, even though no such limitation appears on the face of the statute.”); *Lockhart v. Long Island Railroad Co.*, 266 F. Supp. 3d 659, 663 (S.D.N.Y. Aug. 2, 2017) (appeal pending) (granting summary judgment because an employee with a non-work-related toothache did not engage in protected activity under subsection (b)(1)(A) and holding subsections (b)(1)(A) and (c)(2) are limited to “work related” conditions and injuries); *Stokes v. Se. Pa. Transp. Auth.*, 657 Fed. Appx. 79, 82 (3rd Cir. 2016) (“nothing in the statute indicates that the ‘hazardous condition’ extends beyond work-related conditions under the rail carrier’s control and covers personal, non-work illness.”) (quoting *Hunter v. CSX Transportation, Inc.*, 2014-FRS-00128, 2015-FRS-00010, slip. op. 7 (ALJ Order Mar. 24, 2015); *Murdock v. CSX Transportation, Inc.* No. 3:15-CV-1242, 2017 WL 1165995, at *4-5, (N.D. Ohio Mar. 29, 2017) (granting motion to dismiss holding “personal illness does not qualify under the [Act] as to § 20109(b)); *Goad*, No. 15-560, 2016 WL 7131597, *3, (granting motion to dismiss because an employee’s report of his non-work related illness, chronic hives and anxiety, was not protected activity under § 20109(b)).

Respondent also analogized this situation to an employee getting injured on vacation; specifically, “if a conductor broke his leg while skiing, he would not be able to safely operate a train[,]” but such report of a broken leg would not constitute protected activity under the Act. Reply at 3. Interpreting the statute without this “work-related” limitation would essentially confer the entire railroad industry’s workers a right to unlimited sick leave. *See Bala*, 776 F.3d at 167.

As such, the interpretations cited by Respondent are both persuasive and correct. Complainant’s personal, non-work related illness does not constitute a hazardous condition under

² The ALJ found the hazardous condition claim reasonable within the scope of the original complaint. *Winch*, 2013-FRS-2014 (ALJ Dec. 4, 2014).

the Act. Therefore, he did not engage in Act protected activity when he reported the illness and missed work. Respondent is entitled to decision as a matter of law.

Since I found that Complainant did not engage in protected activity, I do not need to make a determination whether his marking off of work, testimony at the internal hearing, and medical documentation satisfies the requirements of § 20109(b)(1)(C).

Accordingly, for the reasons stated above, the complaint in this matter is hereby **DENIED**.

SO ORDERED.

PAUL R. ALMANZA

Associate 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.

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).