



Issue Date: 17 October 2019

Case No.: 2019-FRS-00063

In the Matter of:

THOMAS JOHANSEN,
Complainant,

v.

ILLINOIS CENTRAL RAILROAD COMPANY,
Respondent.

DECISION AND ORDER
GRANTING RESPONDENT'S MOTION FOR SUMMARY DECISION
AND
ORDER CANCELING HEARING

This case arises under the employee protection provisions of the Federal Railroad Safety Act, U.S. Code Title 49, Section 20109, as amended ("FRSA"), and its implementing regulations at 29 CFR Part 1982. Pursuant to 29 CFR § 1982.107, the proceedings are subject to the rules of practice and procedure set forth in federal regulations at 29 CFR Part 18, Subpart A (29 CFR § 18.10 to § 18.95).

Procedural History

Thomas Johansen ("Complainant") filed a complaint on December 29, 2017,¹ alleging that Respondent retaliated against him in violation of 49 U.S.C. § 20109(b)(1)(A) by terminating him from his position as a mechanical supervisor on August 16, 2017. The complaint was investigated and on April 5, 2019, the Regional Supervisory Investigator in OSHA's Atlanta Regional Office issued the Secretary's Findings, finding that there was no reasonable cause to believe the Respondent violated the FRSA and dismissing the complaint. On April 23, 2019, the Complainant filed objections to the Secretary's Findings and requested a hearing before an Administrative Law Judge. I issued a *Notice of Assignment* on May 2, 2019, and a *Notice of Hearing* on June 7, 2019, setting this matter for hearing on November 6-8, 2019, in Memphis, Tennessee.

¹ The complaint was received by the OSHA office in Nashville on January 16, 2018.

On September 20, 2019, Respondent filed a *Motion for Summary Decision* (the “Motion”), accompanied by a Memorandum in Support, a Declaration of William Owensby,² and Exhibits A-S. Pursuant to 29 C.F.R. § 18.33(d), Complainant had 14 days (plus three days due to service of the motion by mail, 29 C.F.R. § 18.32(c)) within which to file a response in opposition.³ The time for filing a response has expired, and no response was filed by Complainant.

Respondent’s Argument

Respondent asserts that the decision to terminate Complainant’s employment as a mechanical supervisor was made on August 14, 2017, prior to his alleged protected activity on August 15, 2017; therefore, Complainant’s termination cannot be due to his engagement in protected activity. Respondent argues that it is entitled to summary decision in its favor because Complainant has not demonstrated a genuine dispute of this material fact.

Respondent submits several pieces of evidence to establish that the decision to terminate Complainant was made on August 14, 2017, the day before Complainant’s alleged protected activity on August 15, 2017. First, Respondent submits a signed declaration from Complainant’s direct supervisor, William Owensby, which discusses the circumstances of Complainant’s termination, and states that the decision was made on August 14, 2017. Second, Respondent submits a series of emails from August 14, 2017, between Complainant’s supervisors and a member of the Human Resources department regarding the decision to terminate Complainant’s employment. (RX⁴-E). Third, Respondent submits Complainant’s termination letter that was dated August 14, 2017. (RX-H). Respondent asserts this evidence shows it made the decision to terminate Complainant by the close of business on August 14, 2017, and it did not consider Complainant’s alleged protected activity in making the decision to terminate him, because that activity did not occur until the next day.

As noted above, Complainant did not file a response to the *Motion for Summary Decision*.

² Mr. Owensby is a General Mechanical Supervisor for Respondent.

³ Rule 18.33(d) provides:

(d) *Opposition or other response to a motion filed prior to hearing.* A party to the proceeding may file an opposition or other response to the motion within 14 days after the motion is served. The opposition or response may be accompanied by affidavits, declarations, or other evidence, and a memorandum of the points and authorities supporting the party's position. Failure to file an opposition or response within 14 days after the motion is served may result in the requested relief being granted. Unless the judge directs otherwise, no further reply is permitted and no oral argument will be heard prior to hearing.

The Scheduling Order included with the Notice of Hearing similarly required that any response to a motion for summary decision be filed within 14 days of service of the motion.

⁴ “RX” refers to Respondent’s Exhibits submitted with the motion for summary decision.

Applicable Law

This proceeding arises from a complaint of whistleblower retaliation under the FRSA.⁵ The FRSA and its implementing regulations⁶ prohibit retaliatory or discriminatory actions by railroad carriers against their employees who: (1) provide information to their employers, a federal agency, or Congress, alleging violation of any Federal law relating to railroad safety or security, or fraud, waste or abuse of public funds intended to be used for railroad safety or security; (2) report a hazardous safety or security condition, refuse to work when confronted by a hazardous safety or security condition, or refuse to authorize use of any safety-related equipment, track, or structure in a hazardous condition; or (3) request medical or first aid treatment.⁷ In this case, the Complainant alleges Respondent violated Section 20109(b)(1)(A) of the FRSA when it terminated him from his supervisor position⁸ for filing a safety complaint with OSHA regarding excessive bird fecal matter in areas regularly used by Respondent's employees.

A person who alleges that he has been discharged in violation of the FRSA is required to make a prima facie showing that his protected activity was a contributing factor in the unfavorable personnel action.⁹ The burden then shifts to the employer to demonstrate by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the protected activity.¹⁰ Therefore, to prevail on his complaint, "an FRSA complainant must establish by a preponderance of the evidence that: (1) he engaged in a protected activity, as statutorily defined; (2) he suffered an unfavorable personnel action; and (3) the protected activity was a contributing factor, in whole or in part, in the unfavorable personnel action." *Henderson v. Wheeling & Lake Erie Railway*, ARB No. 11-013, ALJ No. 2010-FRS-012, slip op. at 5-6 (ARB Oct. 26, 2012) (citing 49 U.S.C. § 42121(b)(2)(B)(iii); *Luder v. Continental Airlines, Inc.*, ARB No. 10-026, ALJ No. 2008-AIR-009, slip op. at 6-7 (ARB Jan. 31, 2012)).

⁵ 49 U.S.C. § 20109.

⁶ 29 C.F.R. Part 1982.

⁷ Complainant alleges that he was retaliated against after reporting a hazardous safety condition. 49 U.S.C. § 20109(b) provides, in relevant part:

(b) Hazardous Safety or Security Conditions.—

(1) A railroad carrier engaged in interstate or foreign commerce, or an officer or employee of such 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....

⁸ As set forth in the Secretary's Findings, upon his termination from his supervisory position, Complainant exercised his seniority under a Collective Bargaining Agreement to return as a machinist employee for Respondent.

⁹ 49 U.S.C. § 42121(b)(2)(B); 49 U.S.C. § 20109(d)(2)(A) (providing that complaints filed under the FRSA's employee protection provisions "shall be governed under the rules and procedures set forth in section 42121(b)," including the "legal burdens of proof set forth in section 42121(b).")

¹⁰ *Id.*

Summary Decision Standard

Motions for summary decision are governed by 29 C.F.R. § 18.72. Under Section 18.72(a), “[a] party may move for summary decision, identifying each claim or defense ... on which summary decision is sought. The judge shall grant summary decision 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.” The rule requires support for a party’s factual positions:

A party asserting that a fact ... is genuinely disputed must support the 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 purposes of the motion only), admissions, interrogatory answers, or other materials; or
- (ii) Showing that the materials cited do not establish the absence ... of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

29 C.F.R. § 18.72(c)(1).¹¹

Only disputes of fact that might affect the outcome of the suit will properly prevent the entry of a summary decision. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986). To determine whether a genuine issue of material fact exists, the trier of fact must consider all evidence and factual inferences in favor of the party opposing the motion. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). A judge should not make credibility determinations or weigh the evidence on summary decision. *Reeves v. Sanderson Plumbing Prod., Inc.*, 530 U.S. 133, 150 (2000).

Summary decision must be entered against a party who “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.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). “In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Id.* at 323 (internal marks omitted). “The moving party is entitled to a judgment as a matter of law because the nonmoving party has failed to make a sufficient showing on an essential element of [his] case with respect to which [he] has the burden of proof.” *Id.* (internal marks omitted). “One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses.” *Id.* at 323-24. “[W]here the nonmoving party will bear the burden of proof at trial on a dispositive issue” and a motion for summary judgment has been “made and supported,” the nonmoving party must “go beyond the pleadings and by [his] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.” *Id.* at 324.

¹¹ Rule 18.72(c)(1) mirrors the language of Federal Rule of Civil Procedure 56(c)(1) (Summary Judgment – Supporting Factual Positions).

The nonmoving party may oppose the motion “by any of the kinds of evidentiary materials listed in Rule 56(c), **except the mere pleadings themselves**, and it is from this list that one would normally expect the nonmoving party to make the showing to which we have referred.” *Id.* (emphasis added). The Administrative Review Board (ARB) has described the complainant’s burden as follows:

Stated more simply, the complainant must identify the specific facts and/or evidence he will bring to trial and such facts and evidence, if believed at trial, must be enough to allow for a ruling in his favor on the issue in question. The burden of producing evidence “is not onerous and should preclude [an evidentiary hearing] only where the record is devoid of evidence that could reasonably be construed to support the [complainant’s] claim.”

Henderson v. Wheeling & Lake Erie Railway, ARB No. 11-013, ALJ No. 2010-FRS-012, slip op. at 9 (ARB Oct. 26, 2012) (quoting *White v. Baxter Healthcare Corp.*, 533 F.3d 381, 400 (6th Cir. 2008)) (bracketing by *Henderson* court). Where the respondent has “attach[ed] affidavits or other documents and evidence” to its motion for summary decision “which purport to state the undisputed facts and challenge the complainant to produce admissible, contrary evidence that creates a genuine issue of fact,” the complainant “must go beyond asserting facts and attach admissible contradictory evidence to raise a genuine issue of material fact.” *Id.*

The relevant events in this case occurred in Memphis, Tennessee, which is within the jurisdictional area of the U.S. Court of Appeals for the Sixth Circuit. Accordingly, the judicial precedents of the Sixth Circuit apply.

Summary of Evidence

The evidence before me shows that Complainant was hired by Respondent on July 14, 2014, and was transferred to a management position effective October 29, 2015. In a signed Declaration submitted with Respondent’s motion, William Owensby stated that he was Complainant’s supervisor in August 2017, and Senior Manager Art Mayo was Mr. Owensby’s supervisor and Complainant’s “next-level manager.” Complainant worked as a Mechanical Supervisor in August 2017. In December 2016, Complainant was disciplined for failure to follow his supervisor’s instructions and failure to adequately support operations. Complainant was disciplined again in May 2017 for verbal abuse, vulgar language, and inappropriate communications with employees by text messages.

Mr. Owensby’s Declaration stated:

By August 14, 2017, Mr. Mayo and I had determined that Mr. Johansen’s performance was not acceptable. We concluded his failure to follow instructions and lack of engagement with safety protocols was detrimental to other employees in the terminal in which he worked and that Mr. Johansen should thus be terminated from his management position.

He summarized an email exchange with Human Resources Manager Darren VanWinkle, in which he and Mr. Mayo explained “the basis for our conclusion that Mr. Johansen should be terminated from his management position.” Mr. Owensby stated that “on Friday, August 11, 2017, I had asked Mr. Johansen to sign a letter that described our conversation about his failure to meet job instructions. When I asked him to sign the letter, he eventually refused, dropped the pen and walked out of my office. By Monday, August 14, 2017, we had learned that Mr. Johansen had failed to follow Mr. Mayo’s instruction (given to all managers) that he was to perform three hours of employee engagement talking about safety and testing with his employees, and document them as well. Mr. Johansen was the only manager to not perform the task as assigned. When he was asked why he had not done so, Mr. Johansen said he did not have time.... We also learned on Monday, August 14, that Mr. Johansen had been told on Friday to perform Chalking audits through the weekend to ensure employees were in fact performing the task (we had some audit failures earlier), and Mr. Johansen did not follow that instruction.”

Mr. Owensby stated that on August 14, 2017, he and Mr. Mayo concluded that Complainant’s employment as a manager be terminated. In an email exchange with Mr. Mayo and Mr. VanWinkle, Mr. Owensby explained that he did not feel a coaching action plan (“CAP”) for Complainant would be appropriate because Complainant’s “refusal to perform surpassed the standard CAP and that his unwillingness to be engaged from a safety, terminal metrics standpoint was becoming detrimental to the rest of the employees in the terminal.” Mr. VanWinkle responded at 4:27 p.m. with a termination letter for Mr. Owensby and Mr. Mayo “to review for accuracy before signing and delivering to Mr. Johansen.” Mr. Owensby stated that the decision to terminate Complainant as a manager had been made and finalized by the end of the business day on August 14, 2017. On August 16, 2017, Complainant refused a meeting with Mr. Owensby and Mr. Mayo, so they called him on the telephone and explained that he was terminated from his management position for performance issues.

In addition to Mr. Owensby’s Declaration, Respondent submitted the series of emails described in the Declaration as Exhibit E, and the termination letter dated August 14, 2017 as Exhibit H.¹² The first email in Exhibit E is from Mr. Owensby to Mr. Mayo and Mr. VanWinkle, and time stamped Monday, August 14, 2017, at 3:17 p.m. It stated that Complainant was given clear instructions for audit and engagement exercises through the weekend, and he failed to perform both; that on Friday Mr. Mayo instructed all managers on duty to perform 3 hours of employee engagement, and that Complainant was the only manager who did not perform the task; that Mr. Mayo deemed it necessary to perform Chalking audits through the weekend, but that Complainant did not perform any Chalking audits; and that “today” the

¹² Respondent submitted various other exhibits intended to support its *Motion for Summary Decision* and its alternative *Motion to Dismiss* that I have reviewed but do not discuss here. They include the Code of Business Conduct for Respondent’s employees (RX-A); a record of personnel actions from Complainant’s file (RX-B); a disciplinary letter from December 21, 2016 (RX-C); a disciplinary letter from May 12, 2017 (RX-D); emails regarding managerial duties assigned to Complainant (RX-F; RX-G); a signed copy of the termination letter with handwritten notes regarding how the information was communicated to Complainant (RX-I); the Declaration of Susan K. Fitzke; the complaint (RX-J); the Secretary’s Findings (RX-K); Complainant’s objection to the Secretary’s Findings (RX-L); the Order Granting Respondent’s Motion to Compel (RX-M); emails between counsel regarding discovery (RX-N; RX-R; RX-S); Complainant’s responses to interrogatories (RX-O); Complainant’s responses to requests for production (RX-P); and Complainant’s disclosures pursuant to 29 C.F.R. § 18.50 (RX-Q).

Complainant was asked to sign a letter regarding Complainant's failure to meet his job instructions, and he refused to sign the letter and walked out of Mr. Owensby's office. (RX-E).

Mr. VanWinkle responded to Mr. Owensby's email at 3:22 p.m. on August 14, and asked "[h]ave we normally put people on a coaching action plan in the past." *Id.* Mr. Owensby responded at 3:33 p.m. the same day and stated: "We have, depending on severity of course. We feel that Mr. Johansen's refusal to perform has surpassed the standard CAP. His unwillingness to be engaged from a safety, terminal metrics standpoint is becoming detrimental to the rest of the employees in the terminal." *Id.* On August 14, 2017 at 4:27 p.m., Mr. VanWinkle sent Mr. Owensby and Mr. Mayo an email with Complainant's termination letter attached. (RX-H). The termination letter dated August 14, 2017 referenced previous discussions regarding unsatisfactory work performance and summarized the instructions given on August 11, 2017, and Complainant's failure to follow them, and stated: "As you know, you were given previous written discipline to correct your performance issues and you continue to have issues in compliance. Consequently, effective immediately, you are being dismissed from your employment with the Illinois Central Railroad Company." (RX-H; RX-I).¹³

The complaint alleges that Complainant reported a hazardous safety condition to OSHA on August 15, 2017; that OSHA "immediately notified" Respondent as to the hazardous safety condition; that Complainant received a telephone call on the morning of August 16, 2017 discharging him from his management position; that the termination letter is dated August 14, 2017 and states that it is "effective immediately"; that Complainant and his managers were present at work on August 14, 2017, but Complainant was not presented with the termination letter that day; that "if Complainant's managers intended to dismiss him on August 14, 2017, he would not have been allowed on the property"; and that the date of August 14, 2017 "was either mistakenly or maliciously changed on the termination letter to indicate [a] date prior to Mr. Johansen's good faith report of a hazardous safety concern." (RX-J).

Discussion

Respondent's motion for summary decision asserts Complainant cannot establish an essential element of his prima facie case: that his protected activity (the safety report made on August 15, 2017) was a contributing factor in the unfavorable personnel action (his discharge from the supervisory position). Because Complainant bears the burden of proof at trial on this essential element of the case, to survive summary decision Complainant must point to specific facts beyond the pleadings themselves showing that there is a genuine issue for trial.

As discussed in greater detail above, Respondent has presented evidence that Complainant's supervisors initiated the personnel action against Complainant on Monday, August 14, 2017, based on Complainant's failure to comply with instructions on Friday, August 11, 2017. (RX-E, RX-F, RX-G). A termination letter was drafted and provided to Complainant's supervisor at 4:27 p.m. on August 14, 2017. (RX-H). Complainant's alleged protected activity (the safety report regarding bird fecal matter) was made on August 15, 2017. (*See* RX-J). The

¹³ RX-H is the email from Mr. VanWinkle with the termination letter attached; RX-I is the signed termination letter with handwritten notes regarding delivery of its contents to Complainant. The content of the two letters is identical; no changes were made after Mr. VanWinkle provided the letter to Mr. Owensby and Mr. Mayo.

signed termination letter dated August 14, 2017 was provided to Complainant at 8:15 a.m. on August 16, 2017. (RX-I). Because Respondent initiated the unfavorable personnel action on August 14, 2017, before any protected activity occurred, Respondent asserts that Complainant cannot establish that his protected activity was a contributing factor in the unfavorable personnel action.

Complainant did not file a response to the motion for summary decision, and thus did not present any contradictory evidence to raise a genuine issue of material fact. As Complainant has not made (or even attempted) any showing of specific facts or evidence that would allow for a ruling in his favor on the question of whether the protected activity was a contributing factor in the unfavorable personnel action, he has not demonstrated a genuine dispute of material fact to defeat summary decision. Instead, this case presents “a complete failure of proof concerning an essential element of the nonmoving party’s case,” and summary decision in Respondent’s favor is appropriate. *Celotex Corp.*, 477 U.S. at 323.

Even if I relied on the complaint itself, Complainant’s complaint does not establish facts or evidence showing that the decision to discharge him was made after his protected activity. The complaint alleges that the date of August 14, 2017 “was either mistakenly or maliciously changed on the termination letter to indicate [a] date prior to Mr. Johansen’s good faith report of a hazardous safety concern,” but points to no facts or evidence that would support this allegation. This allegation rests on Complainant’s speculation alone, which is not sufficient to overcome summary decision. *See Mulhall v. Ashcroft*, 287 F.3d 543, 552 (6th Cir. 1984) (summary judgment was appropriate where the decision-makers testified they had no knowledge of the protected activity, and the complainant “failed to produce any evidence, direct or circumstantial, to rebut these denials. *Mulhall* offers only conspiratorial theories, not the specific facts required under the Federal Rule of Civil Procedure 56.”)¹⁴

In sum, Respondent submitted emails dated August 14, 2017 discussing the decision to discharge Complainant, the termination letter dated August 14, 2017 itself, and the Declaration of Mr. Owensby that the decision to terminate Complainant’s employment as a manager had been made and finalized by the end of the business day on August 14, 2017. Complainant asserted in his complaint that Respondent back-dated the termination letter to August 14, 2017, but he has failed to “go beyond the pleadings” and support his allegations by pointing to facts or potential evidence that would show this occurred. There is nothing in the record before me to support the allegation that the termination letter was back-dated, or that the decision to discharge Complainant was made after he engaged in the alleged protected activity on August 15, 2017. As the uncontradicted evidence shows that Respondent made the decision to discharge Complainant and wrote his termination letter prior to his alleged protected activity on August 15, 2017, Complainant has failed to establish a genuine dispute of material fact as to whether the protected activity was a contributing factor in the unfavorable personnel action—an essential element of the case. By failing to point to any factual support for this element of his claim, Complainant has failed to establish a genuine issue as to this material fact, and Respondent is entitled to summary

¹⁴ In *Mulhall*, the Sixth Circuit cites *Visser v. Packer Eng’g Assocs., Inc.*, 924 F.2d 655, 659 (7th Cir. 1991) (en banc), for the proposition that summary judgment was appropriate where the inferences the plaintiff sought to draw from evidence were akin to “flights of fancy, speculations, hunches, intuitions, or rumors about matters remote from [personal] experience.”

decision in its favor. *See Fenton v. HiSAN, Inc.*, 174 F.3d 827 (6th Cir. 1999) (where the complainant “has not met her burden of showing that her protected activity was known to those who made” the adverse personnel decision, summary decision was appropriate; the complainant “has failed to set forth a *prima facie* case against defendant and we need not examine the remaining elements with respect to” the personnel decision).

Under 49 U.S.C. § 42121(b)(2)(B), the Secretary of Labor shall dismiss a complaint “unless the complainant makes a *prima facie* showing that any [protected activity] was a contributing factor in the unfavorable personnel action alleged in the complaint.” Because Complainant has not made the required showing, as discussed above, the motion for summary decision will be granted and the complaint will be dismissed. Because I grant summary decision in Respondent’s favor, the hearing scheduled for November 6-8, 2019, in Memphis, Tennessee will be canceled.

Respondent also submitted an alternative Motion to Dismiss for Complainant’s alleged failure to comply with discovery requirements. Because I find that Summary Decision is appropriate, I do not address the alternative Motion to Dismiss.

ORDER

For the reasons set forth above, **IT IS ORDERED**:

Respondent’s Motion for Summary Decision is **GRANTED**, and the complaint filed by Thomas Johansen under the FRSA is **DISMISSED**.

The hearing scheduled for November 6-8, 2019, in Memphis, Tennessee is hereby **CANCELED**.

SO ORDERED.

MONICA MARKLEY
Administrative Law Judge

MM/jcb
Newport News, Virginia

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).