



Issue Date: 31 July 2015

Case No.: 2014-NTS-00006

In the Matter of

BRENDA JOHNSON
Complainant

v.

ELECTRONIC TRANSACTION CONSULTANTS CORP.
Respondent

DECISION AND ORDER DISMISSING COMPLAINT

This matter arises out of a complaint filed pursuant to the employee protection provisions of the National Transit Systems Security Act of 2007 (“NTSSA” or “the Act”), which was enacted on August 3, 2007, as Section 1413 of Public Law 110-053, and is found at 6 U.S.C. § 1142. The regulations at 20 C.F.R. Part 1982 govern claims filed under the NTSSA. The Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, set forth at 29 C.F.R. Part 18, apply in this proceeding. The Complainant is not currently represented by counsel.

Procedural History

Electronic Transaction Consultants (hereafter “ETC”) discharged Complainant on or about July 25, 2014. RX 3; Tr. at 24.¹ On July 30, 2014, Complainant filed a complaint under 6 U.S.C. § 1142 of the NTSSA with the Department of Labor’s Occupational Safety and Health Administration (“OSHA”) alleging that the Respondent, had retaliated against her.² OSHA dismissed the complaint. DX 5.

¹ The following abbreviations are used in this Decision: “RX” refers to Respondent’s Exhibits; “CX” refers to Complainant’s Exhibits; and “Tr.” refers to the transcript of the March 24-25, 2015 hearing.

² Specifically, Claimant’s OSHA allegations were as follows:

Ms. Johnson alleges that she was disciplined and fired for informing a customer of her right to file a dispute about being over-charged and for reporting a discrepancy between who opened the safe on June 18th, 2014, and who signed the paperwork that day. She, also, believes that her employer violated the law by not distinguishing sick leave from vacation leave. Ms. Johnson believes her employer violated the National Transit Systems Security Act, enacted as Section 1414 of the 911 Commission Act of 2007, Number 110-053, also known as 6 U.S.C. section 1142.

On August 17, 2014, Claimant filed a charge of race, sex and age discrimination with the Equal Employment Opportunity Commission. DX 6.

On or about September 9, 2014, Complainant requested a hearing before the Office of Administrative Law Judges.

This case was assigned to me on September 16, 2014. On October 1, 2014, I issued a Notice of Assignment and directed that a conference call be held on October 16, 2014. During this conference call, Complainant indicated that she had elected to proceed *pro se*.³ On October 28, 2014, I issued a Notice of Hearing and Pre-hearing Order setting the hearing in this matter to begin March 24, 2015. On February 2, 2015, I issued a Notice of Hearing Location informing the Parties of the exact location of the hearing.

On February 9, 2015, in U.S. District Court, Complainant filed a civil lawsuit against ETC under Title VII of the Civil Rights Act of 1964 (hereafter “Title VII”)⁴ alleging employment discrimination through “misappropriation or a failure to properly account for public funds” and alleging sex discrimination, race discrimination, and retaliation. As part of the facts she alleged concerning her claim of discrimination, Complainant cited to 6 U.S.C § 1142, the NTSSA. RX 8. *See also* Tr. at 83 – 87.

On March 12, 2015, Respondent filed its pre-hearing brief. There, this Tribunal first learned that Complainant had filed a separate action for discrimination. In its brief, Respondent informed this Tribunal that Complainant had filed suit in U.S. District Court and Washington State Superior Court asserting that her discharge violated Title VII. *See* RX 7 and RX 8.

A hearing in this matter was held in Lakewood, Washington on March 24 and 25, 2015. At that time the Parties had a full opportunity to present any testimonial or documentary evidence. This Tribunal received into evidence Respondent’s exhibits 1 through 11. Tr. at 6. Complainant attempted to offer CX 1 – CX 84. However, after reviewing the documents during the hearing, I only admitted CX 1-4, 8-10, 19, 20, 24, 28-33, 35-37, 42-45, 47-49, 51-54, 57-63, 65-68, 70-72, 75-83, and 85. Tr. at 6-70 and 74.⁵ In addition to receiving documents into evidence, this Tribunal took testimony from the Complainant (Tr. at 79 – 146 and 210 - 226) as well as an employee of the Respondent (Tr. at 147 – 210).

At the hearing, Complainant also asserted that she complained of a credit card being thrown at her by a customer and management not taking action (Tr. at 42, 46); that she was denied payment and benefits because of alleged child support obligations and non-contributions to her 401(k) (*See* Tr. at 66-70); incorrect billing of customers; theft of tolls and bills from the mail room; and access to a safe (Tr. at 79 – 80).

³ On at least two occasions prior to the hearing, this Tribunal informed Complainant of her right to counsel. Tr. at 12. At the hearing I made a finding that Complainant had knowingly, voluntarily and willingly waived her right to counsel. *Id.* at 13.

⁴ 42 U.S.C. 2000e *et seq.*

⁵ Because of the confusing and scattered nature of Complainant’s testimony, I had the parties review the status of exhibits and agree that the following exhibits were not admitted into evidence: CX 5, 6, 7, 11 through 18, 21, 22; Complainant proffered no exhibits numbered 23, 25, 26, 27, 34, 38–41, 46, 50, 55, 56, 64, 69, 73, 74 and 84. Tr. at 70.

After hearing testimony and admitting evidence, this Tribunal informed the Parties that it specifically wanted them to address the provisions under 6 U.S.C. § 1142 pertaining to the election of forums. Tr. at 228. Subsequently, the Parties submitted their respective post-hearing briefs.⁶

Discussion and Legal Conclusions

As an initial matter, although a *pro se* complainant may be held to a lesser standard than legal counsel with regard to matters of procedure, the complainant must still carry the burden of proving the necessary elements of her case.⁷

I. The NTSSA's "Election Of Remedies" Provision Does Not Bar Complainant's Complaint Before This Tribunal.

Title 6 U.S.C. § 1142(e) provides: "An employee may not seek protection under both this section **and another provision of law** for the same allegedly unlawful act of the public transportation agency." (Emphasis added.)

NTSSA's whistleblower protections utilize the same statutory criteria as the Federal Rail Safety Act of 1982 ("the FRSA"), 49 U.S.C. § 20109. However, the FRSA specifically incorporates the procedures for handling whistleblower matters under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121 ("AIR 21"), while the NTSSA does not. 49 U.S.C. § 20109(d)(2). There is very limited case law dealing with NTSSA whistleblower matters, but the whistleblower protections afforded by the NTSSA, and the elements necessary to prove a case of retaliation under the NTSSA, are similar to those found in the FRSA, AIR 21, and other statutes, such as the Surface Transportation Assistance Act ("STAA"), 49 U.S.C. § 31105, and the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A ("SOX"). Therefore, I will look to decisions issued by the Department of Labor's Administrative Review Board and the courts in similar whistleblower statutes for guidance in examining the issues presented here.

Compounding the difficulty of this issue is a general lack of guidance available on the interpretation of statutory election of remedies provisions; election of remedies is a common law doctrine not generally rooted in statutory text. Here, it is undisputed that Complainant has filed suit under both the NTSSA and Title VII of the Civil Rights Act before different jurisdictions. In particular, Complainant has a federal civil suit pending before the U.S. District Court for the

⁶ This Tribunal notes that Claimant's testimony and brief were disjunctive and exceptionally difficult to follow. Complainant's brief included several "cut and paste" extracts from various other documents. This Tribunal will do its best to understand the arguments of this *pro se* complainant.

⁷ Complainant bears the initial burden of making a prima facie showing of retaliation by demonstrating that: (1) she engaged in protected activity, (2) the employer knew of the protected activity, (3) she suffered an unfavorable personnel action, and (4) the circumstances to suggest that the protected activity was a contributing factor to the unfavorable action. *Fraser v. Fiduciary Trust Co., Int'l*, 417 F.Supp. 2d 310, 322 (S.D.N.Y. 2006); *see also Gattegno v. Admin. Review Bd.*, 353 F. App'x 498, 499-500 (2d Cir. 2009). Even if a prima facie showing is made, the claim will be dismissed if the employer demonstrates, by clear and convincing evidence, that it "would have taken the same unfavorable personnel action in the absence of" the protected activity. §§ 1142(c)(2)(B)(ii), (iv).

Western District of Washington⁸ and a similar suit in Washington State Superior Court.⁹ RX 8; RX 9.

Here, Complainant seeks protection for essentially identical acts under both the NTSSA and Title VII. The alleged acts concern the same Respondent and its alleged activities over the same period of time. Thus, I find that these cases involve essentially “the same allegedly unlawful act.” The next question is whether Title VII should be considered “another provision of law,” for the purposes of NTSSA’s election of remedies provision. This provision is very broad and, indeed, identical to that contained in the Federal Rail Safety Act.¹⁰

Complainant seeks District Court review through the use of Title VII, a statute that provides substantive protections against discrimination. This case is analogous to *Howell v. BNSF Railway Co.*, 2015 U.S. Dist. LEXIS 72060 (June 4, 2015), where plaintiff alleged BNSF fired him because of his race, alleging a violation of Title VII, and the Illinois Human Rights Act and the FRSA. One of plaintiff’s arguments was the FRSA was not an adequate remedy. The court commented that it was “mindful that had [plaintiff] opted to pursue a claim under FRSA, he would have been precluded from pursuing remedies under any other law.” *Howell, supra*, at slip. op. *4 (citing to *Reed v. Norfolk S. Ry Co.*, 740 F.3d 420, 424-5 (7th Cir. 2014)). But I find it significant that the focus of each statute is different. Title VII of the Civil Rights Act has its main purpose in prohibiting discrimination in employment by employers based on race, color, religion, sex or national origin. See 42 U.S.C. § 2000e-2. The underlying purpose of NTSSA is for employee protection from retaliation because the employee has engaged in protected activity pertaining to public transportation safety or security. 29 C.F.R. § 1982.100(a). An adverse action is unlawful under NTSSA only if it is, at least in part, in retaliation for the employee having engaged in a safety-or security-related whistleblower activity.

⁸ Case No. 3:14-cv-05872.

⁹ However, Respondent in its pre-hearing brief indicated that the state case was removed to federal court.

¹⁰ See 49 U.S.C. § 20109(f). Several United States courts of appeals, numerous district courts, and the Secretary of Labor have each addressed the related issue of whether the FRSA’s election of remedies provision bars an employee from pursuing a FRSA whistleblower complaint if an employee has previously pursued arbitration related to the same adverse action, under the employee’s collective bargaining agreement (“CBA”). They all concluded that an arbitration to enforce rights under a CBA is not an election of remedies under section 20109(f). See *Grimes v. BNSF Ry.*, 746 F.3d 184 (5th Cir. 2014) (per curiam); *Reed v. Norfolk S. Ry.*, 740 F.3d 420 (7th Cir. 2014); *Koger v. Norfolk S. Ry.*, No. 1:13-12030, 2014 WL 2778793 (S.D.W.Va. June 19, 2014); *Pfeifer v. Union Pac. R.R.*, No. 12-cv-2485, 2014 WL 2573326 (D. Kan. June 9, 2014); *Ray v. Union Pac. R.R.*, 971 F. Supp. 2d 869 (S.D. Iowa 2013); *Ratledge v. Norfolk S. Ry.*, No. 1:12-cv-402, 2013 WL 3872793 (E.D. Tenn. July 25, 2013); *Kruse v. Norfolk S. Ry.*, ARB Case Nos. 12-81 & 12-106, 2014 WL 860729 (Admin. Review Bd. Jan. 28, 2014), petition for review docketed *Norfolk S. Ry. v. Perez*, No. 14-3274 (6th Cir. March 28, 2014); *Mercier v. Union Pac. R.R. and Koger v. Norfolk S. Ry.*, ARB Case Nos. 09-121, 09-101, 2011 WL 4889278 (Admin. Review Bd. Sept. 29, 2011) (ARB consolidated cases for review) (“*Mercier*”); cf. *Battenfield v. BNSF Ry.*, No. 12-cv-213, 2013 WL 1309439 (N.D. Okla. Mar. 26, 2013) (examining § 20109(f) and permitting plaintiff to add a FRSA retaliation claim to his lawsuit, which had alleged violation of the Federal Employers’ Liability Act, despite complainant also having challenged his termination under his CBA); *Norfolk S. Ry. v. Solis*, 915 F. Supp. 2d 32, 43-45 (D.D.C. 2013) (concluding that the court did not have jurisdiction to review the Administrative Review Board’s (“ARB”) *Mercier* decision because the ARB’s statutory interpretation was, at a minimum, a colorable interpretation of FRSA’s election of remedies provision).

A close reading of the language of the statute also conveys an order of precedential consideration. The requirement that the election of remedies provision applies only to actions in which an employee seeks protection for “the same allegedly unlawful act.” Use of the phrase “the same” suggests that NTSSA’s election of remedies provision is meant to bar a cause of action under NTSSA by an employee who has already pursued a cause of action under another statute that protects against unlawful acts of retaliation for safety-or security-related whistleblowing. Here, Complainant initially filed her NTSSA complaint and subsequently filed her Title VII complaints. Thus, if any action is barred, it is the complaint in U.S. District Court, not her initial NTSSA action, currently before this Tribunal and at issue in this Recommended Decision.

It seems equally clear that the intent of this provision is to shelter courts – not administrative tribunals – from the burden of adjudicating multiple actions by any one complainant. This position is consistent with the twin concerns over preserving the higher court’s resources, and affording the administrative tribunals the opportunity to develop the factual record. Consequently, if anything, it would be the filing in U.S. District Court, not this Tribunal, that would be the focus of the proscription contained in 6 U.S.C. § 1142(e). This view is also consistent with the general principle that a claimant must exhaust his or her administrative remedies before seeking review in the district courts. The exhaustion rule serves the legitimate state interest of requiring parties to exhaust administrative remedies before proceeding to the district courts, thereby preventing an overworked court system from considering issues and adopting remedies that were otherwise available through administrative channels. *See generally, Bowen v. New York*, 476 U.S. 467, 484 (1986) (“Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review.” (internal citations omitted)). Finally, when filings occur before both administrative bodies and district courts, it must be the district court – not this Tribunal – that decides whether the election of forums is barred by the NTSSA’s election of remedies provision. This Tribunal is without authority to dictate the actions of a court and there is no indication that any district court involved in any of Complainant’s numerous lawsuits has dismissed her actions. In contrast, the District Court has the authority to dictate actions of an administrative tribunal.

Finally, the statute when read as a whole indicates that the scope of subsection (e) is not nearly as broad as its contents would first seem. The subsequent two subparagraphs provide:

(f) NO PREEMPTION. - Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

(g) RIGHTS RETAINED BY EMPLOYEE. - Nothing in this section shall be construed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

6 U.S.C. §1142(f) and (g).

Specifically, subsection (f) makes it clear that this statute is not intended to prevent access to the safeguard Congress established for the explicit purposes of addressing the discriminatory acts of certain employers. What it appears to do is preserve those safeguards after exhausting the remedy contained in the NTSSA. In other words, the plain language of these subsections provide support for the view that once a complainant invokes the protections afforded under the NTSSA, he or she must first exhaust all administrative remedies – such as the matter at issue in this Decision – prior to pursuing an alternate remedy under another anti-discrimination statute. So in the context of the statute as a whole, the term “another provision of law” should not be read as broadly as Respondent has suggested; rather, it should be read much more narrowly.

Consistent with this larger reading of the NTSSA, I find that the phrase “another provision of law” refers to a law with the same or similar purpose as the NTSSA, to wit: safety and security. Thus, for example, if a complainant would file a complaint under both the FRS and the NTSSA, then subsection (e) could be properly invoked to dismiss the complaint. Again, this reading is consistent with the overarching goal of promoting judicial efficiency and forestalling the possibility of fomenting contradictory decisions.¹¹

Accordingly, and for all of the above reasons, I find that Title VII is not “another provision of law” as set forth in 6 U.S.C. § 1142(e). Thus, I do not dismiss Complainant’s complaint under that provision of law.

II. Respondent is Not a Covered Employer Under the NTSSA.

Next, this Tribunal must address whether ETC is a covered employer under the NTSSA. In its brief, Respondent correctly argued that the NTSSA only applies to public transportation agencies and their contractors. *Respondent’s Brief* at 4. At the hearing, Respondent asserted that it has never operated any public transportation entities, and therefore is not a public transportation agency under the NTSSA. ETC maintained that it provides “systems integration and back office customer support for the [Washington State Department of Transportation’s] toll road operations.” *Respondent’s Brief* at 5. *See also* Tr. at 148 – 149. It further argued that “toll

¹¹ This view of precluding multiple filings was raised in the context of the enactment of the Federal Rail Safety Act.

According to the member of Congress who managed the bill in the House of Representatives, the election-of-remedies provision was intended to:

[C]larify[] the relationship between the remedy provided here and a possible separate remedy under OSHA. Certain railroad employees, such as employees working in shops, could qualify for both the new remedy provided in this legislation, or an existing remedy under OSHA. It is our intention that pursuit of one remedy should bar the other, so as to avoid resort to two separate remedies, which would only result in unneeded litigation and inconsistent results.

126 Cong. Rec. 26532 (Sept. 22, 1980) (statement of Rep. Florio) (quoted in *Norfolk Southern Ry. Co. v. Perez*, 778 F.3d 507, 510 (6th Cir. 2015)).

roads” are not “public transportation” as defined by the NTSSA. Finally, it argues that it is a contractor of the Washington Department of Transportation and as such it is not a “public transportation agency” within the meaning of the NTSSA. Respondent cited nary a single case in support of any of the above propositions.

For the NTSSA to apply, ETC must be a “public transportation agency, a contractor or a subcontractor of such agency, or an officer or employee of such agency.” 6 U.S.C. § 1142(a). A public transportation agency is not defined in the statute, but is defined in the regulations as follows: “a publicly owned operator of public transportation eligible to receive Federal assistance under 49 U.S.C. chapter 53 [49 U.S.C. §5301 *et seq.*].” 29 C.F.R. § 1982.101(i). **Forty-nine U.S.C. § 5302 does not use the term “public transportation agencies,” but uses the term “public transportation.” See 49 USCS § 5302.**¹² **Agencies that receive public assistance are maintained in a statutorily required database. 49 U.S.C. § 5335(a). This database is maintained by the Federal Transit Administration (“FTA”).**¹³

Complainant alleged that ETC is a contractor for the Washington State Department of Transportation (“WSDOT”). I find that ETC provides in-person and electronic toll services to certain toll roads operated by the WSDOT. See Tr. at 148-9.¹⁴ **In fact, WSDOT is not an agency identified within the FTA’s database. However, the statute does not require the actual receipt of funds; only that public transportation entity is eligible to**

¹² 49 U.S.C. § 5302(14) defines “public transportation” as follows:

(14) Public transportation. The term "public transportation"--

(A) means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and

(B) does not include—

(i) intercity passenger rail transportation provided by the entity described in chapter 243 (or a successor to such entity);

(ii) intercity bus service;

(iii) charter bus service;

(iv) school bus service;

(v) sightseeing service;

(vi) courtesy shuttle service for patrons of one or more specific establishments; or

(vii) intra-terminal or intra-facility shuttle services.

¹³ 49 U.S.C. § 5335(a) provides:

(a) NATIONAL TRANSIT DATABASE — To help meet the needs of individual public transportation systems, the United States Government, State and local governments, and the public for information on which to base public transportation service planning, the Secretary of Transportation shall maintain a reporting system, using uniform categories to accumulate public transportation financial and operating information and using a uniform system of accounts. The reporting and uniform systems shall contain appropriate information to help any level of government make a public sector investment decision. The Secretary may request and receive appropriate information from any source. *See generally*, <http://www.fta.dot.gov/>.

¹⁴ Testimony by the ETC Director of Human Resources, Cyndi Robinson. She described ETC as “a system integrator for the toll roads for the [Washington State] Department of Transportation. Our owner is the one that developed the panels that read your toll tags at high speeds, so they took away all the gates from the toll plazas.”

receive Federal assistance. To determine whether WSDOT is eligible to receive Federal assistance – in the absence of case law or other interpretative authority – one must look to the types of entities that are eligible for assistance under 49 U.S.C. § 5302(14). The types of entities described in the statute, in essence, are mass transit agencies. **In no way does 49 U.S.C. § 5302(14) refer to agencies like the Washington Department of Transportation. Rather, it encompasses agencies, *inter alia*, like King Country Metro in Seattle, Intercity Transit in Olympia, and the Washington State Ferries.¹⁵ The WSDOT is neither listed on the FTA’s database, nor is it similar to the types of entities referenced in 49 U.S.C. § 5302(14).**

In sum, I find that ETC is not a contractor of a public transportation agency as defined by the NTSSA. Therefore, ETC is not a covered employer and this Tribunal is without jurisdiction to adjudicate this matter. Accordingly, Complainant’s complaint is hereby **DISMISSED**.

SCOTT R. MORRIS
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business 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.

¹⁵ See <http://www.ntdprogram.gov/ntdprogram/cs?action=showRegionAgencies®ion=0> (last visited 7/28/15).

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).