



Issue Date: 13 August 2018

Case No.: 2018-NTS-00001

In the Matter of

GUY BAILEY

Complainant

v.

METROPOLITAN TRANSIT AUTHORITY;

Respondent

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

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 the Implementing Regulations of the 9/11 Commission Act of 2007, Pub. L. No. 110-053, and is found at 6 U.S.C. § 1142. Implementing regulations were published on November 9, 2015. See "Procedures for the Handling of Retaliation Complaints Under the National Transit Systems Security Act and Federal Railroad Safety Act," 80 Fed. Reg. 69,138 (Nov. 9, 2015) to be codified at 29 C.F.R. Part 1982.¹ A hearing in this matter was scheduled for July 16, 2018, and canceled pending a decision on this motion by Order issued July 5, 2018. Complainant is represented by counsel.

I. PROCEDURAL BACKGROUND

Guy Bailey ("Complainant") filed a complaint with OSHA under the Act on July 27, 2017, asserting that his superintendent retaliated against him and other employees for alerting the supervisor to safety and health issues with the New York City Transit Authority ("Respondent"). After Complainant filed a complaint with his agency and the New York State Department of Labor, Respondent allegedly passed over Complainant and denied him overtime hours, which he had received prior to submission of his complaint.

On November 29, 2017, OSHA dismissed Complainant's complaint, finding that he failed to timely file within the 180-day statutory period. Specifically, OSHA held that the November 15, 2016 date of Complainant's accusation that Respondent denied him overtime

¹ Unless otherwise noted, all references to regulations are to Title 29, Code of Federal Regulations (C.F.R.). References to the implementing regulations will cite to the applicable provision in Part 1982, rather than to the Federal Register.

rendered his claim untimely, as he filed it on July 27, 2017, more than 180 days after the alleged violation. Complainant appealed OSHA's findings on December 19, 2017.

The undersigned received the case thereafter and issued an Initial Notice of Hearing and Pre-Hearing Order on January 2, 2018. The Notice set a hearing for April 30, 2018 in New York, New York. After a telephonic conference call, the parties agreed to reschedule the hearing date for July 16, 2018, which the undersigned memorialized in an Order dated March 14, 2018. The Order altered the evidentiary deadlines accordingly.

On March 22, 2018, Complainant requested an unopposed seven-day extension for the exchange of initial submissions, which the undersigned granted via email from her legal assistant on March 23, 2018.

On May 23, 2018, Complainant filed a Motion to Compel Discovery Responses and Request for Sanctions, as well as a supplemental motion submitted later that same day. The undersigned denied Complainant's motion by Order dated June 15, 2018.

On June 11, 2018, Respondent filed a Motion to Dismiss. By Order dated July 5, 2018, the undersigned canceled the July 16, 2018 hearing pending a decision on this Motion. On July 16, 2018, Complainant requested a stay in this matter pending the outcome of new charges filed with OSHA on June 20, 2018.

II. PARTIES' EXHIBITS

As part of Respondent's Motion to Dismiss, it included the following exhibits:

- A. Transcript and audio recording of Complainant's interview with OSHA on November 7, 2017
- B. Complainant's responses to Respondent's First Set of Interrogatories and Request for Documents dated May 4, 2018
- C. Letter from Complainant to Mr. Christopher J. Carlin dated November 8, 2017
- D. New York State Public Employee Safety and Health Bureau ("PESH") investigation narrative, dated October 24, 2017
- E. PESH informal conference report dated February 16, 2018
- F. Completed contract interpretation grievance forms from August 2016 through October 2016
- G. Arbitration award dated December 15, 2017
- H. Letter from Mr. Carlin to Complainant dated November 29, 2017
- I. Complainant's appeal dated December 14, 2017
- J. Complainant's Initial Submissions dated March 30, 2018
- K. Complainant's incident detail reports and disciplinary charges from July 2017 through December 2017
- L. Improper practice charge filed by Complainant filed with State of New York Public Employment Relations Board received on December 20, 2017

III. RESPONDENT'S ARGUMENTS ON THE MOTION

In moving for dismissal of this complaint, Respondent argues that Complainant cannot raise new claims that OSHA has not previously considered, citing to 6 U.S.C. § 1142(c)(1). Here, the only claim Complainant presented to OSHA related to denial of overtime beginning in July or August 2016, allegedly in retaliation for complaints about lack of flagging that occurred several months later. According to Respondent, Complainant no longer complains of denied overtime, but has now altered his claim to aver that Respondent removed him from service and imposed disciplinary charges from July to October 2017 in retaliation for his complaints made in July 2017. Complainant did not bring these claims to OSHA. Instead, his OSHA complaint consisted only of Respondent's denial of overtime allegedly in response to his voicing concerns about flagging in November and December 2016. See Respondent's Motion at 6-7.

Respondent further asserts that the overtime claim actually brought before OSHA is time barred by the statute of limitations, which requires complainants to file NTSSA-related complaints within 180 days of the date the alleged violation occurs. According to Complainant, Respondent denied him overtime in July or August 2016 in retaliation for filing safety complaints about the lack of flagging. However, he did not file his claim until July 27, 2017, a period in excess of 180 days. Thus, Complainant did not timely present the complaint to OSHA and is barred by the statute of limitations. See Respondent's Motion at 7.

Moreover, Respondent contends that the election of remedies doctrine bars Complainant's claim, citing to 6 U.S.C. § 1142(e) which states 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." Complainant seeks to recover under the NTSSA for his denial of overtime and lost wages, as well as under Article 14 of the Civil Service law seeking the same remedies. Because Complainant seeks to recover twice for the same alleged protected activity, Respondent contends that his claims should be barred. See Respondent's Motion at 7-8.

As for the substance of his complaint, Respondent asserts that Complainant cannot establish a causal link between his flagging complaints and the denial of overtime and maintains that it would have taken the same action in the absence of any alleged protected activity. From a temporal standpoint, Respondent denied him overtime prior to his articulating concerns about flagging in late 2016. In addition, Respondent could not have given Complainant the overtime he demanded because it needed to ensure a fair distribution of overtime to its employees. Respondent added that it would have taken Complainant out of service and levied discipline on him for failure to comply with his supervisor's orders and perform his duties. Respondent represents that Complainant first complained about flagging in November 2016 and was taken out of service eight months later on July 21, 2017 and was also disciplined in October 2017, almost a year after the original complaint. Owing to these substantial gaps in time, one cannot ascribe a retaliatory motive between the flagging activity and adverse actions. If retaliatory animus had truly motivated Respondent, it would have taken Complainant out of service or imposed discipline shortly after Complainant made his complaint, not eight months to almost a year later. Moreover, Respondent argues that it cannot unilaterally impose a penalty on Complainant per the collective bargaining agreement, which provides that the employee can

appeal the decision to a neutral arbitrator, who then rules on the matter. See Respondent's Motion at 8-10.

IV. COMPLAINANT'S RESPONSE

Complainant requested a stay in the matter on July 16, 2018, explaining that he was without counsel during his original interview with OSHA. At that time in front of the OSHA investigator, he was unable to adequately identify and articulate the entirety of the adverse actions he had suffered, according to Complainant. Having retained counsel as of March 13, 2018 and out of an abundance of caution, Complainant filed new, but related whistleblower charges with OSHA on June 20, 2018, which Complainant claims will allow him to interview with OSHA and bring forth evidence of the adverse actions he continues to suffer. Thus, Complainant requests a stay in this matter pending the outcome of these new and related charges filed with OSHA.

V. LEGAL STANDARD

When deciding a motion to dismiss a complaint for failure to state a claim, pursuant to 29 C.F.R. 18.70(c), the administrative law judge may refer to cases adjudicating Federal Rule of Civil Procedure ("FRCP") 12(b)(6) motions as general guidance. See 29 C.F.R. § 18.10. The U.S. Court of Appeals for the Second Circuit² has stated that a court must "accept as true the factual allegations of the complaint, and draw all inferences in favor of the pleader." Mills v. Polar Molecular Corp., 12 F.3d 1170, 1174 (2d Cir. 1993); see also Gorman v. Consol. Edison Corp., 488 F.3d 586, 591-92 (2d Cir. 2007). In addition, the Tribunal must give Complainant's claims "a liberal construction." Johnson v. New York City Transit Auth., 639 F. Supp. 887, 891 (E.D.N.Y. 1986) (citing Haines v. Kerner, 404 U.S. 519, 520-21 (1972)), aff'd in part and vacated in part on other grounds, 823 F.2d 31 (2d Cir. 1987). However, the undersigned is not required to accept the truth of legal conclusions couched as factual allegations. See Papasan v. Allain, 478 U.S. 265, 286 (1986).

In Bell Atl. Corp. v. Twombly³ and Ashcroft v. Iqbal,⁴ the Supreme Court clarified the pleading standard under which courts are to evaluate a motion to dismiss. When deciding a motion to dismiss, this Tribunal should consider whether the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft, 556 U.S. at 678 (quoting Bell Atl. Corp., 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft, 556 U.S. at 678; see also Hayden v. Paterson, 594 F.3d 150, 160 (2d Cir. 2010). Under this heightened pleading standard, labels, conclusions, and mere recitation of the elements of a cause of action will not suffice. Id.; see also Bell Atl. Corp., 550 U.S. at 555. Instead, a complainant must provide enough factual support that, if true, would "raise a right to relief above the speculative level." Id. However, "plausibility" does not rise to the level of probability, but requires "more than a sheer possibility

² As the hearing in this matter will take place in New York, case law from the U.S. Court of Appeals for the Second Circuit applies.

³ 550 U.S. 544 (2007).

⁴ 556 U.S. 662 (2009).

that a defendant has acted unlawfully.” Barbosa v. Continuum Health Partners, Inc., 716 F. Supp. 2d 210, 215 (S.D.N.Y. 2010) (internal quotation marks omitted). “The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.” Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); see also Villager Pond, Inc. v. Town of Darien, 56 F.3d 375, 378 (2d Cir. 1995), *cert. denied*, 519 U.S. 808 (1996).

In the Second Circuit, a complaint need not establish a *prima facie* case in a whistleblower claim to survive a motion to dismiss; however, the complainant must at least plausibly allege that a similarly situated employee might reasonably possess a belief that the employer’s conduct constituted a violation. See Ott v. Fred Alger Mgmt., Inc., 2012 U.S. LEXIS 143339 at *16 (S.D.N.Y. 2012). “With respect to causation, although detailed pleading of the facts is not required...a complaint must allege a factual predicate concrete enough to warrant further proceedings.” Id. at 17 (internal citations omitted). The undersigned applies that standard in the instant matter.

VI. FACTS PRESENTED IN THE LIGHT MOST FAVORABLE TO COMPLAINANT

The facts presented in the light most favorable to Complainant include the following:⁵

- A. Complainant contacted PESH to investigate material stacked over sick feet in the train yard in April 2016. See Respondent’s Exhibit A (“EX A”) at 36.
- B. Respondent denied Complainant overtime hours in July or August 2016. See EX A at 9.
- C. Complainant began to complain about the overtime denial on August 31, 2016. See EX A at 12.
- D. Complainant verbally reported movement of trains without flagging protection in late November to early December 2016 and did so again on December 15, 2016 by contacting the command center. See EX A at 16, 33.
- E. In March and April 2017, Complainant submitted numerous “Hazardous Complaint Forms” alerting PESH to several safety violations alleging that employees did not have proper flagging protection.
- F. In response to Complainant’s safety complaints, Investigator Kwo Lam of PESH conducted an inspection at the Linden Yard in Brooklyn, New York in April 2017.
- G. On April 27,⁶ Investigator Lam ended his inspection by putting Superintendent Joe Micelotta on notice, in the presence of Complainant, that he would consider any adverse action taken in connection with the inspection a form of retaliation.
- H. Investigator Lam advised Complainant and other employees to alert PESH immediately if they suffer retaliation for their participation in the investigation.
- I. On or around June 8 and July 7, Complainant submitted several “Hazardous Complaint Forms” alerting PESH to various unaddressed health and safety complaints arising at the Linden Yard.

⁵ Unless otherwise indicated, all facts originate from Complainant’s Initial Submissions.

⁶ All dates going forward in this section occurred in 2017.

- J. On or around July 7 and August 11, PESH initiated a partial safety complaint inspection at the Linden Yard. Investigator Varghese Mathew and Investigator Lam conducted the inspection with Complainant and Respondent's management present.
- K. On July 7, Complainant received a letter from PESH stating that the investigation revealed violations related to items from his complaint and that PESH issued a violation notice to Respondent.
- L. On July 18, several supervisors assigned Complainant and other employees unsafe work tasks. The employees asked for a safe work assignment and General Superintendent Joe Nassela suspended them without pay. Complainant then submitted a "PESH Discrimination Complaint Intake Form" regarding this incident and other unsafe work dating back to February 2017 that same day.
- M. Respondent also took Complainant out of service without pay on July 17 and July 20-21.
- N. On July 27, Complainant filed another complaint with PESH alleging health and safety violations and documenting ongoing retaliation for safety-related protected activity, including the ongoing denial of overtime since November 15, 2016.
- O. Respondent took Complainant out of service without pay on August 1 and 2, which Complainant reported to PESH.
- P. On August 17, PESH Manager Raynard Caines advised Complainant by letter that the case had been referred to OSHA.
- Q. Respondent again took Complainant out of service without pay on August 25, August 31, September 1, September 5, September 7, September 26, and October 10. Complainant reported each incident to PESH.
- R. On or around October 12, Complainant contacted the Federal Rail Administration ("FRA") reporting unsafe train movements, the unavailability of train operators, and the approved removal of gondolas, which he believed constituted unsafe and dangerous acts.
- S. On or about October 16, FRA Investigator Ed Flynn spoke to Complainant at the Linden Shop about the issues he raised in his complaint.
- T. Respondent took Complainant out of service without pay on October 17-18 and October 20.
- U. On or about October 23, Mr. Flynn inspected the siding location on site and determined the need for modification and documentation of Respondent's operating procedures for future safe operation. A modified procedure was established ensuring safe operations.
- V. Respondent took Complainant out of service without pay on October 25.
- W. On October 25, Complainant detailed a phone call with Mr. Flynn wherein Mr. Flynn told Complainant that Mr. Micelotta identified Complainant as the person who called Mr. Flynn to initiate the inspection.
- X. On November 6, OSHA Investigator Reuben Lopez emailed Complainant to schedule an interview for the next day regarding the PESH referral. Complainant then emailed Mr. Micelotta, Mr. Nassela, and Supervisor Chris Alberto to advise them of the meeting scheduled for November 7.
- Y. Respondent took Complainant out of service from November 15 to November 17 and again on December 7 and subsequently moved to terminate him.

- Z. On January 8, 2018, the FRA advised Complainant that it directed Respondent to develop a procedure to correct the flagging problems at the Linden Yard, which Respondent disseminated to its employees.

VII. DISCUSSION

In his Initial Submissions, Complainant argues his denial of overtime on November 15, 2016 represented just one of several violations that he presented to PESH on July 27, 2017 and that OSHA failed to consider the subsequent instances of protected activity that occurred in 2017. See Initial Submissions at 1-2. Complainant's Case Activity Worksheet (or OSHA complaint) asserts the following:

Complainant states the Superintendent has been retaliating against him after these employees have brought up safety and health issues with the employer. After filing complaints with his agency and subsequently with the NYS DOL, the Complainant...has been passed over and denied overtime hours. Which he often received prior to the submission of said complaints.

See Case Activity Worksheet.

This complaint identified one undated adverse action: the denial of overtime hours. In Complainant's Initial Submissions to the Office of Administrative Law Judges, he detailed additional adverse actions including suspensions without pay at various points throughout the months of July through December 2017. These adverse actions are notably absent from Complainant's Case Activity Worksheet. Complainant also argues that "OSHA failed to consider the remaining instances of protected activity through complaints which addressed health and safety violations protected by 6 U.S.C. § 1142 and 49 USC §20109" in his Initial Submissions. However, despite illustrating allegations that he engaged in protected activity starting in March 2017 that led to subsequent suspensions in his Initial Submissions, he does not indicate whether he actually presented these allegations to OSHA. In the absence of such an assertion, it follows that OSHA did not have the opportunity to evaluate these allegations. With no evidence to the contrary, the undersigned presumes that Complainant did not raise the 2017 alleged protected activities or suspensions referenced in his Initial Submissions in his July 27, 2017 OSHA complaint.

"The OSHA investigation is an absolute prerequisite for a hearing and subsequent appeals." Coates v. Southeast Milk, Inc., ARB Case No. 05-050, ALJ Case No. 2004-STA-060, slip op. at 8 n.3 (July 31, 2007). In Coates, a *pro se* truck driver filed an STAA claim contending that his employer terminated him for reporting the dumping of contaminated milk into the state's commercial milk supply. Id. at 8. On appeal to the Administrative Review Board ("ARB" or "the Board"), the truck driver argued that the ALJ erred in not permitting him to amend his complaint to add a charge of discrimination under the Toxic Substances Control Act ("TSCA"). Id. at 8 n. 3. In affirming the ALJ's finding, the Board held that the truck driver never filed a TSCA complaint with OSHA and OSHA never issued findings concerning the TSCA-related complaint. Therefore, the ALJ did not have the power to adjudicate the TSCA complaint. Id. In support of its holding, the Board cited to an Eleventh Circuit case where an employee's OSHA complaint omitted certain individuals as respondents, which deprived OSHA of the opportunity

to investigate their actions and caused the employee not to exhaust his administrative remedies. Id.; see also Bozeman v. Per-Se Techs., 456 F. Supp. 2d 1283, 1358 (N.D. Ga. 2006).

Here, Complainant similarly did not file his claims of protected activities surrounding the flagging violations that transpired during 2017, which triggered PESH investigations, with OSHA. Nor did he allege his suspensions as adverse actions. Based on the reasoning in Coates, the omission of these allegations in Complainant's OSHA complaint renders the undersigned unable to adjudicate them as an appellate fact-finder. Moreover, evaluating these claims before this Tribunal would prejudice Respondent, which has an equitable right to learn of the accusations levied upon it prior to the matter reaching the Office of Administrative Law Judges so it can properly prepare its case.

Although a whistleblower complainant need not meet the standards of pleading that apply to claims in federal court under Rule 12(b)(6), he or she must give the opposing party fair notice of the charges against it. See Dhir v. Carlyle Grp. Empl. Co., 2017 U.S. LEXIS 162386, at *33 (S.D.N.Y. 2017.) By presenting new allegations in his Initial Submissions, Complainant failed to comply with this obligation. That Complainant did not have the benefit of counsel when he failed to present these allegations to OSHA does not relieve him of this obligation. He cannot now present claims not previously made to OSHA, leaving Respondent to scramble to mount a defense on appeal. Because Complainant's OSHA complaint failed to give Respondent notice of the alleged 2017 protected activities and suspensions, the undersigned will not consider these claims.

Complainant now asks that we stay this case while he presents new complaints to OSHA. Even if Complainant has new complaints that OSHA finds are timely filed and investigates, that does not cure the untimeliness of the complaints in the matter before me. Assuming OSHA investigates the new complaints and issues a finding, either party will have an opportunity to appeal that finding once it is made.

This ruling still leaves the lone allegation that Complainant did present to OSHA: that Respondent denied Complainant overtime hours as a result of raising health and safety concerns related to the lack of flagging in late 2016. Complainant did not identify the date on which the denial occurred in his OSHA complaint. OSHA's findings reflect that Complainant's alleged protected activity took place in November 2016. In his November 7, 2017 interview, Complainant contended that he alerted his control center to the flagging issue via online complaint on December 15, 2016, and had done so verbally since November of that year. See EX A at 19, 23. Complainant characterized this incident as "just one of several violations...presented to PESH on July 27, 2017 and ultimately referred to OSHA." See Initial Submissions, at 1.

The NTSSA allows a complainant to file a complaint with OSHA within 180 days of the alleged violation. See 6 U.S.C. § 1142(c). Complainant filed the complaint regarding denial of overtime on July 27, 2017. Therefore, any alleged violations that he became aware of **prior to January 27, 2017** are untimely pursuant to 6 U.S.C. § 1142(c), unless Complainant can

successfully argue that the statute of limitations should be equitably tolled.⁷ However, Complainant makes no such argument. Complainant does not offer a justification for tolling the statute of limitations and this incident occurred outside of the 180-day period. Therefore, Complainant is time-barred from bringing this claim.

Even assuming Complainant timely filed this complaint, the undersigned observes that Complainant did not provide adequate factual support to sustain a right to relief under the NTSSA. Although the undersigned is compelled to give a liberal construction to Complainant's claim, Complainant is obligated to put forth underlying evidence that would raise his right to relief above the speculative level at this stage of the proceeding. Aside from Complainant's contentions articulated in his Initial Submissions, Complainant failed to put forth credible evidence sufficient to meet his burden.

Based on the foregoing, the undersigned **GRANTS** Respondent's Motion to Dismiss and **DENIES** Complainant's Motion for a Stay.

SO ORDERED.

THERESA C. TIMLIN
Administrative Law Judges

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 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

⁷ "Equitable tolling should be applied sparingly and only when exceptional circumstances prevented timely filing through no fault of the plaintiff.... Only exceptional circumstances, not garden variety claim[s] of excusable neglect, allow us to toll the statute of limitations." Bohanon v. Grand Trunk Western Railroad, ARB No. 16-048, ALJ No. 2014-FRS-003, slip op. at 3 (Apr. 27, 2016).

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).