



**Issue Date: 30 April 2010**

CASE NO. 2010-SOX-00006

*In the Matter of:*

JOCELYN SANCHEZ-RUSSELL,

*Complainant,*

vs.

KINDRED HEALTHCARE,

*Respondent.*

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

This matter arises under the employee protection, or whistleblower, provisions of the Corporate and Criminal Fraud Accountability Act of 2002, also known as Section 806 of the Sarbanes-Oxley Act ("the Act," "SOX"), Public Law 107-204, codified at 18 U.S.C. § 1514A.

On May 22, 2009, Complainant filed a Sarbanes-Oxley whistleblower complaint (Comp.) with the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). It alleges that Complainant was terminated "in retaliation for informing management that an employee was embezzling and thus violating internal accounting procedures and controls." Comp., pp. 2-3. By letter dated October 2, 2009, and received by Complainant's counsel on October 15, 2009, OSHA dismissed the complaint (OSHA Findings). On November 10, 2009, Complainant timely filed a Notice of Objection and Request for Hearing (Comp. Hrng. Req.). The case was assigned to me on November 13, 2009.

On November 23, 2009, I issued a Notice of Docketing and Assignment and Order Setting Forth Briefing Schedule as to Threshold Issue, to determine the timeliness of the complaint. On January 15, 2010, Respondent filed a motion for summary judgment (Resp. Motion), accompanied by five exhibits (Resp. Motion, Ex. A-E). Complainant timely filed an opposition on January 29, 2010 (Comp. Opp.), accompanied by two exhibits (Comp. Opp., Ex. A-B). Respondent timely filed a reply on February 8, 2010.

**SUMMARY OF DECISION**

Respondent's motion is granted and Complainant's complaint is dismissed.

Respondent has demonstrated that there is no genuine issue of material fact regarding how and when Respondent communicated its decision to terminate Complainant's employment. Respondent has also demonstrated that, as a matter of law, the 90 day SOX filing period began to run on February 18, 2009, when two of Respondent's vice-presidents informed Complainant that her employment would be terminated effective February 27, 2009. Because the record does not contain evidence justifying the

equitable tolling of the filing period, Complainant's May 22, 2009 complaint, filed 93 days after the filing period commenced, is untimely and must be dismissed.

### **BACKGROUND**

According to Complainant's declaration, she was hired by Respondent on December 3, 2007 to serve as their Chief Clinical Officer in Kansas City.<sup>1</sup> Comp. Opp., Ex. A., p. 2. On September 27, 2008, she transferred to the position of Resource Chief Clinical Officer. *Id.* Complainant declares that she made six specific disclosures regarding embezzlement to Respondent's Executive Director of the Northwest region, its Executive Director of the Desert region, and its Vice President of Clinical Operations.<sup>2</sup> *Id.*

On February 18, 2009, Complainant met with Respondent's Senior Vice President Traci Shelton and Vice President for Clinical Operations Lourene Money in Albuquerque, New Mexico. Resp. Motion, Ex. C, p. 1, Ex. D, pp. 1-2; Comp. Opp., Ex. A, p. 1. According to Complainant, the meeting was "very brief." Resp. Motion, Ex. C, p. 1; Comp. Opp., Ex. A, p. 1. In a response to an interrogatory, Complainant states that Ms. Shelton "indicated that the travel/resource position was not a fit." Resp. Motion, Ex. C, p. 1. She adds that "[n]o performance issues were discussed" and she "was advised that my last date of employment was on February 27, 2009."<sup>3</sup> *Id.* Complainant adds that the fact that she had never received a negative evaluation and had only received praise for her work established that she was "a fit" for the position. Comp. Opp., Ex A, p. 2.

Complainant admits that she was told that she was relieved of further duties as of February 18, 2009. Resp. Motion, Ex. D., p. 3. In response to interrogatories, Complainant adds that Ms. Shelton and Ms. Money advised her "to hand-off all documents and responsibilities to newly-hired CCO [Chief Clinical Officer] for Albuquerque, Elena Pino Weise, effective immediately on February 18, 2010." Resp. Motion, Ex. C, p. 2. Complainant adds that Ms. Shelton offered to allow her to change her travel plans and return to her home in Las Vegas on February 18, 2009. Resp. Motion, Ex. C, pp. 2-3. She had previously been scheduled to return to Las Vegas on February 20, 2009. *Id.* at 3. Complainant did change her travel plans and returned to Las Vegas on February 18, 2009. *Id.* at 3. Complainant admits that after February 18, 2009, she provided no further services to Respondent or any of its subsidiaries or affiliates. Resp Motion, Ex. D., p. 6.

According to Complainant's declaration, she was "given no documentation, 'termination contract' or other paperwork confirming her termination until she received a severance package on February 27, 2009." Comp. Opp., Ex. A, p. 2. Complainant maintains that at any time between February 18, 2009 and February 27, 2009, "Respondent could have offered to move [her] to a different position/department within the company, a position which would have been a better 'fit.'" *Id.* Complainant further declares that Respondent "had no policy by which there is an established history of verbally communicating to an employee that they are not a good fit with their position in the company, indicating that their position would be terminated, continuing to pay said employee her salary, and failing to provide any documentation until they provide her with a severance agreement nearly two weeks later." *Id.*

---

<sup>1</sup> The record does not specify whether Complainant worked in Kansas City, Missouri or Kansas City, Kansas.

<sup>2</sup> The record does not specify when or how these disclosures were made.

<sup>3</sup> In response to another interrogatory, Complainant agreed that she was told "that her employment was terminated effective February 27, 2009[.]" *Id.* at 2. Complainant's declaration states only that her supervisor "indicated that the travel/resource position was not a fit" and that she "was advised that her last day of employment would be on February 27, 2009." Comp. Opp., Ex. A, pp. 1-2.

Complainant declares that she did not file a grievance or complaint prior to February 27, 2009, nor did she begin looking for employment prior to February 27, 2009. Comp. Opp., Ex. A, p. 2. She further declares that she “waited for further action/information from Respondent, for the two weeks between February 18, 2009 and the actual date of termination, February 27, 2009.” *Id.* In a response to an interrogatory, however, Complainant states that she contacted Respondent’s Vice President, Human Resources, on February 26, 2009 “inquiring about the separation documents and COBRA benefits.” Resp. Motion, Ex. C, p. 3.

Complainant declares that on February 27, 2009 Complainant received her severance package which stated “your employment at Kindred Healthcare will end effective February 27, 2009.” Comp Opp., Ex. A, p. 2, Ex. B, p.1.

## **DISCUSSION**

The question presented is whether Complainant suffered an adverse employment action on February 18, 2009, when she was told that her position “was not a fit” and that she would be terminated.

The SOX whistleblower provision prohibits retaliation by publicly traded companies against their employees who provide information to a supervisory employee, a federal agency, or Congress, alleging violation of federal law relating to fraud against shareholders. 18 U.S.C. § 1514A(a), 29 C.F.R. § 1980.102(b). To state a claim under the employee-protection provisions of the Act, a complainant must allege that: (1) she engaged in a protected activity; (2) the respondent knew that she engaged in the protected activity; (3) the complainant suffered an unfavorable personnel action, i.e., an adverse employment action; and (4) the protected activity was a contributing factor in the unfavorable action. *Harvey v. Home Depot*, ARB Nos. 04-114, 115, ALJ Nos. 2004-SOX-020, 036, Slip Op. at 10 (ARB June 2, 2006); *Getman v. Southwest Securities, Inc.*, ARB No. 04-059, ALJ No. 2003-SOX-8, Slip Op. at 8 (ARB July 29, 2005).

A SOX whistleblower complaint must be filed “not later than 90 days after the date on which the violation occurs.” 18 U.S.C. § 1514A(b)(2)(D). A violation occurs when a discriminatory decision “has been both made and communicated to the complainant.” 29 C.F.R. § 1980.103(d). If a complaint is not timely filed, the complaint should be dismissed. *See, e.g., Levi v. Anheuser Busch Companies*, ARB Nos. 06-102, 07-020, 08-006, ALJ Nos. 2006-SOX-037, 108, 2007-SOX-055, Slip Op. at 15-16 (ARB April 30, 2008); *Rollins v. American Airlines, Inc.*, ARB No. 04-140, ALJ No. 2004-AIR-009, Slip Op. at 2-4 (ARB April 3, 2007).

The parties do not dispute that Complainant filed her complaint on May 22, 2009. *See* Resp. Motion, p. 4; Comp. Opp., p. 10. Thus, the whistleblower violation complained of must have occurred in the 90 days before the filing, or no earlier than February 21, 2009. If the violation complained of here – Complainant’s termination – occurred on February 18, 2009, the complaint is not timely. If, however, the violation did not occur until February 27, 2009, the complaint is timely.

### I. STANDARD FOR SUMMARY DECISION

Summary decision may be granted for any party if the pleadings, affidavits, materials obtained by discovery or otherwise, or matters officially noticed, show that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. 29 C.F.R. § 18.40(d); Fed. R. Civ. P. 56(c). A judge “does not weigh the evidence or determine the truth of the matters asserted, but only determines whether there is a genuine issue for trial” by viewing the record “in the light most favorable to the non-moving party.” *Stauffer v. Wal-Mart Stores, Inc.*, ARB No. 99-107, ALJ No. 99-STA-21, Dec. &

Ord. of Remand, slip. Op. at 6 (ARB Nov. 30, 1999) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1985)).

A fact is material if proof of that fact would establish or refute one of the essential elements of a cause of action or a defense asserted by the parties. *Matsushita Elec. Indus. Co. Ltd. v. Zenith*, 475 U.S. 574, 585-88 (1986). The fact must necessarily affect application of appropriate principles of law to the rights and obligations of the parties. *Id.* If reasonable doubt remains as to the facts, the motion must be denied. *Anderson*, 477 U.S. at 247-52.

The moving party bears the initial burden of showing that there is no genuine issue of material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). By moving for summary decision, a party asserts that based on the present record and without the need for further exploration of the facts and conceding all unfavorable inferences in favor of the non-moving party, there is no genuine issue of material fact to be decided and the moving party is entitled to a decision as a matter of law. Fed. R. Civ. P. 56, 29 C.F.R. § 18.40(d). When a motion is properly supported, the nonmoving party must go beyond the pleadings to overcome the motion. He may not merely rest upon allegations, but must set out specific facts showing a genuine issue for trial. *Anderson*, 477 U.S. at 248.

Thus, Respondent, as the moving party, bears the burden of demonstrating (1) that there is no genuine issue of material fact regarding when the decision to terminate Claimant's employment was made and communicated to Complainant, and (2) that, as a matter of law, the decision to terminate Complainant's employment was made and communicated to Complainant on February 18, 2009.

## II. GENUINE ISSUE OF MATERIAL FACT

The parties do not dispute the basic facts regarding their interaction between February 18 and February 27, 2009. Accordingly, I find that there is no genuine issue of material fact as to when the decision to terminate Complainant's employment was made and communicated to her.

Complainant's declaration and her responses to interrogatories and requests for admissions submitted by Respondent convey essentially the same account regarding the events of February 18, 2009. There is no dispute that on that date Complainant had a brief meeting in Albuquerque, New Mexico with Respondent's Senior Vice President Traci Shelton and Vice President for Clinical Operations Lourene Money. Resp. Motion, Ex. C, p. 1, Ex. D, pp. 1-2; Comp. Opp., Ex. A, p. 1. There is also no dispute that during that meeting she was told that "the travel/resource position was not a fit" and that her last day of employment would be on February 27, 2009.<sup>4</sup> Resp. Motion, Ex. C, p. 2; Comp. Opp., Ex. A, pp. 1-2. Complainant's declaration adds that performance issues were not discussed and that Complainant had never received a negative evaluation. See Resp. Motion, Ex. C, pp. 1-2.

The parties' exhibits show that Complainant received a severance package on February 27, 2009, which stated that her employment would end that day. Comp. Opp., Ex. A., pp. 2-3, Ex. B, p. 1. Complainant adds, and Respondent does not dispute, that this was the first written documentation of her termination that Complainant received. Comp. Opp., Ex. A., p. 3. Respondent also does not dispute Complainant's declaration that it did not have a policy by which employees are given a "verbal warning of termination" followed by a later termination with no hope of Respondent reconsidering and finding the employee a new position. See *id.*

---

<sup>4</sup> In a response to another interrogatory, Complainant agreed that she was told "that her employment was terminated effective February 27, 2009[.]" Resp. Motion, Ex. C, p. 2.

There is also no dispute that between February 18 and 27, 2009, the only communication between the parties occurred on February 26, 2009. On that date, Complainant states, she contacted Respondent's Vice President, Human Resources "and inquired about the separation documents and COBRA benefits." Resp. Motion, Ex. C, p. 4. Complainant's declaration states that between February 18 and 27, 2009, she neither pursued a grievance or complaint nor searched for employment. Comp. Opp., Ex. A, p. 2. Additionally, Complainant admits that after February 18, 2009, she performed no work for Respondent. Resp. Motion, Ex. D, p. 6. Rather, Complainant declares, she "waited for further action/information from Respondent, for the two weeks from February 18, 2009 until the actual date of termination, February 27, 2009."<sup>5</sup> *Id.*

As the parties have no material factual dispute regarding the events of February 18-27, 2009, they have no need for a trial to conduct further fact finding on the timeliness issue. All that remains is the question of whether Respondent's decision to terminate Complainant's employment was made and communicated to Complainant either on February 18 or 27, 2009.

### III. ENTITLEMENT TO JUDGMENT AS A MATTER OF LAW

After reviewing the evidence and the relevant law, I find that on February 18, 2009, Respondent made and communicated to Complainant its decision to terminate her employment nine days later on February 27, 2009. Complainant's complaint was filed 93 days later on May 22, 2009, after the SOX ninety day filing period had expired. As the record contains no evidence necessitating tolling of the filing period, the complaint is untimely and must be dismissed.

#### A. Notice of Termination

It is well established that the date that an employer communicates to an employee its intent to implement an adverse employment decision marks the occurrence of a violation, rather than the date the employee experiences the consequences.<sup>6</sup> *Halpern v. XL Capital, Ltd.*, ARB No. 04-120, ALJ No. 2004-SOX-54, Slip Op. at 3 (ARB Aug. 31, 2005); *Overall v. Tennessee Valley Auth.*, ARB Nos. 98-111, 98-128, ALJ No. 97-ERA-53, Slip Op. at 36 (ARB Apr. 30, 2001); *see also Chardon v. Fernandez*, 454 U.S. 6, 8 (1981) (placing focus on when employee receives notification of the discriminatory act, not when consequences of the act become apparent); *Delaware State Coll. v. Ricks*, 449 U.S. 250, 258 (1980) (holding that limitations period began to run when tenure decision was made and communicated rather than on the date employment terminated).

The Administrative Review Board has explained that the filing period in whistleblower cases runs from the date an employee receives "final, definitive, and unequivocal notice" of an adverse employment decision.<sup>7</sup> *Halpern*, Slip Op. at 3; *see also, e.g., Jenkins v. United States Env'tl. Prot. Agency*, ARB No.

---

<sup>5</sup> Although this statement appears inconsistent with her February 26, 2009 inquiry regarding termination documents, I construe it as merely amplifying her assertion that she neither pursued a grievance or complaint nor searched for new employment between February 18 and 27, 2009. *See* Comp. Opp., Ex. A., p. 2.

<sup>6</sup> Complainant's argument that the filing period for her complaint commenced on February 27, 2009, is based, in part, on her reading of cases which address what constitutes an adverse personnel action. *See* Comp. Opp., pp. 14-18. That, however, is not the issue here. Complainant's complaint sets forth that her termination was an adverse employment action. *See* Comp. pp. 2, 5; OSHA Findings, p. 1. Respondent's motion does not challenge this assertion; it is therefore assumed for the purposes of this motion that the adverse employment action at issue here is Complainant's termination. Respondent's motion does argue that Complainant did not timely file her complaint arguing that her termination was a retaliatory act prohibited by SOX. Resp. Motion, pp. 2-4. Thus, the issue raised by Respondent's motion is when the filing period for that adverse employment action began to run.

<sup>7</sup> In arguing that the filing period commenced on February 27, 2009, Complainant relies on a decision of the California Court of Appeal which states that one "may seek redress through the courts only for final employment

98-146, ALJ No. 1988-SWD-2, Slip Op. at 14 (ARB Feb. 28, 2003). “Final” and “definitive” notice denotes communication that is decisive or conclusive, that is, it leaves no further chance for action, discussion, or change. “Unequivocal” notice means communication that is not ambiguous and is free of misleading possibilities. *Halpern*, Slip Op. at 3; *Larry v. The Detroit Edison Co.*, 86-ERA-32, slip op. at 14 (Sec’y June 28, 1991). The standard is an objective one, based on what a reasonable person in a complainant’s position would have understood. *Sneed v. Radio One, Inc.*, ARB No. 078-072, ALJ No. 2007-SOX-018, Slip Op. at 8-9 (ARB Aug. 28, 2008).

Respondent’s communication to Complainant on February 18, 2009 in Albuquerque was final, definitive, and unequivocal. Complainant was told that her employment would be terminated effective February 27, 2009. Comp. Opp., Ex. A, p. 1. Although Complainant was told that “the travel/resource position was not a fit,” nothing in the record suggests that either Ms. Shelton or Ms. Money stated that Respondent would attempt to find another position for Complainant. In the absence of such a commitment, the only objectively reasonable interpretation of the statement that the position was “not a fit” is as an explanation for the termination decision. A reasonable person would not regard this explanation as an indication that the termination decision was provisional or subject to rescindment. Thus, I find that Respondent’s statement was not tainted by ambiguity or misleading possibility.

Complainant suggests that the February 18, 2009 communication was not an adverse employment action because, until her termination on February 27, 2009, Respondent “held open the door” and could have offered to move her to another position.<sup>8</sup> See Comp. Opp., Ex. A, pp. 2-3. Nothing in the record, however, suggests that any doors were held open for Complainant that are not held open for any employee who receives a notice of termination. Theoretically, any employer who notifies an employee that her employment will be terminated may offer that employee another position. If such a possibility tolled the running of a filing period, filing periods for terminated employees could never commence until the termination became effective. This would run counter to the well established rule that whistleblower filing periods commence when an employee receives notice of the discriminatory act. See *Ricks*, 449 U.S. at 258; *Chardon*, 454 U.S. at 8; *Halpern*, Slip Op. at 3; *Overall*, Slip Op. at 36. Accordingly, the ARB has explained that a whistleblower filing period begins to run even when there is a possibility that the termination could be avoided. *Rollins*, Slip Op. at 3-4; *Lawrence v. AT&T Labs*, ALJ No. 2004-SOX-065, Slip Op. at 6 (ALJ Sept. 9, 2004). Thus, the mere possibility that Respondent could have offered Complainant a position does not alter the final, definitive, and unequivocal nature of the February 18, 2009 communication.

Complainant also unpersuasively argues that Respondent’s motion improperly applied the U.S. Supreme Court’s holding in *Delaware State College v. Ricks*, 449 U.S. 250 (1980). Comp. Opp., pp. 4-14. Complainant argues that “Respondents [sic] rely upon the Supreme Court’s rule regarding timeliness outlined in *Delaware State College v. Rick[s]*. . . . However, when applying the factors set forth in *Delaware*, it is clear that Summary Judgment should be denied.” Comp. Opp., p. 4. She also asserts that *Ricks* applied the rule that a violation occurs when a discriminatory decision is communicated to an employee “narrowly . . . to cases involving similar facts as those in [*Ricks*].” Comp. Opp., p. 8.

---

actions; i.e., those that are not subject to reversal or modification through internal review processes.” Comp. Opp., p. 17 (quoting *McRae v. Dept. of Corrections*, 127 Cal.App.4th 779 (Cal. App., 2005)). Complainant appears to assert that *McRae* applies here because of similarities between SOX and the California Fair Employment and Housing Act’s protections. Comp. Opp., p. 17. Federal courts, however, have not imposed a “final employment action” requirement and have held that the availability of further “internal review,” such as a grievance or appeal procedure, does not stay the running of a whistleblower filing period. See, e.g., *Int’l Union of Electrical, Radio and Machine Workers v. Robbins & Myers, Inc.*, 429 U.S. 229, 236-40 (1976); *Greenwald v. City of North Miami Beach, Florida*, 587 F.2d 779 (5th Cir. 1979). Accordingly, I find that *McRae* does not apply in this federal forum.

<sup>8</sup> Complainant does not make this argument in her opposition to Respondent’s motion for summary decision, though it is implicitly raised in Complainant’s Declaration.

Complainant's arguments misinterpret the holding and the reasoning in *Ricks* and fail to establish that Respondent improperly applied *Ricks*.

*Ricks* is one of the seminal cases addressing when filing periods commence in whistleblower and discrimination cases. It is widely applied. See Comp. Opp., p. 4; see also *Chardon*, 454 U.S. at 8; *Sneed*, Slip Op. at 7; *Rollins*, Slip Op. at 3; *Halpern*, Slip Op. at 3; *Jenkins*, Slip Op. at 13; *Overall*, Slip Op. at 36-37; *Lawrence*, Slip Op. at 4, 6. *Ricks* involved a college professor's claim of discriminatory discharge in violation of Title VII. *Ricks*, 449 U.S. at 252-54. The college declined to grant the professor tenure and instead gave him a "terminal" contract to teach for one more year, after which he would no longer be employed by the college. *Id.* at 253-54. The Court concluded that the filing period commenced "at the time the tenure decision was made and communicated. . . . even though one of the *effects* of the denial of tenure—the eventual loss of a teaching position—did not occur until later." *Id.* at 258. In *Chardon v. Fernandez*, 454 U.S. 6 (1982), the U.S. Supreme Court described *Ricks* as holding that "the proper focus is on the time of the *discriminatory act*, not the point at which the *consequences* of the act become painful." 454 U.S. at 8.

### B. Equitable Tolling

Because the SOX filing period is not jurisdictional, it is subject to equitable modification. *Smale v. Torchmark Corp.*, ARB No. 09-012, ALJ No. 2008-SOX-057, Slip Op. at 6 (ARB Nov. 20, 2009); *Overall*, Slip Op. at 40-43. However, as the U.S. Supreme Court has explained, equitable relief from filing deadlines is "typically extended . . . only sparingly." *Irwin v. Veterans Admin.*, 498 U.S. 89, 96 (1990). Here, the record does not support equitably tolling the filing period.

The ARB has explained that there are three principal situations in which equitable modification may apply:

- (1) where the Respondent has actively concealed or misled the employee regarding the cause of action,
- (2) where the employee was prevented from asserting her right in some extraordinary way, and
- (3) where the complainant raised the precise statutory claim in the wrong forum.

*Patino v. Birken Manufacturing Company*, ARB No. 09-054, ALJ No. 2005-AIR-023, slip op. at 3 (ARB Nov. 24, 2009); *Smale*, Slip Op. at 7.

I find no basis for applying the doctrine of equitable tolling to Complainant's claim. A complainant bears the burden of justifying the equitable modification of a filing period. *Smale*, Slip Op. at 7. Here, Complainant has made no such argument. Furthermore, I find no evidence that the running of Complainant's filing period should be equitably tolled. Respondent affirmatively told Complainant on February 18, 2009 that her employment would be terminated; there is no evidence of active concealment. Additionally, I find no evidence showing that Complainant was prevented from asserting her right in any way. Finally, there is no evidence in the record that Complainant first filed her SOX complaint in another forum.

## CONCLUSION

Respondent has met its burden to demonstrate that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Complainant's complaint alleging that her termination violated the SOX whistleblower protection should have been filed 90 days after she was notified of her termination on February 18, 2009. The complaint, however, was filed on May 22, 2009, 93 days after she was notified she would be terminated. As a matter of law, therefore, the complaint was not timely filed. It is hereby **DISMISSED**.

## ORDER

Complainant's complaint is hereby **DISMISSED**.

A

ANNE BEYTIN TORKINGTON  
Administrative Law Judge

**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 the administrative law judge's decision. *See* 29 C.F.R. § 1980.110(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; 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. § 1980.110(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(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. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

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. § 1980.109(c). Even if you do file a Petition, 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 after the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).