



**Issue Date: 22 December 2010**

OALJ Case No.: 2010-SOX-00048

In the Matter of:

PAUL SIMKUS,  
Complainant,

v.

UNITED AIRLINES, INC.,  
Respondent.

### **ORDER DISMISSING COMPLAINT**

This matter arises out of a complaint of discrimination filed by Paul Simkus (“Complainant”) against United Airlines, Inc. (“Respondent”) pursuant to the employee protection provisions of the Corporate and Criminal Fraud and Accountability Act, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A (“Sarbanes-Oxley,” “SOX,” or “the Act”). The statute and implementing regulations, appearing at 29 C.F.R. Part 1980, prohibit retaliatory or discriminatory actions by publicly-traded companies against employees who provide information to their employer, a federal agency, or Congress, alleging violation of certain federal laws relating to fraud or fraud against shareholders. The issues presently before the undersigned are: (1) whether Complainant has made out a *prima facie* case of discrimination under SOX; (2) whether Complainant’s SOX complaint was timely filed; and (3) whether Complainant’s request to amend his May 10, 2010 whistleblower complaint should be granted.

### **Background and Procedural History**

On May 10, 2010, Mr. Simkus filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that Respondent violated Section 806 of SOX.<sup>1</sup> (OSHA Report; EX A). In his complaint, Complainant makes numerous allegations of violations by Respondent of assorted federal labor and employment laws including the Occupational Safety and Health Act, the Americans with Disabilities Act, the ADA Amendments Act, the Age

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<sup>1</sup> The following abbreviations will be used as citations to the record: “OSHA Report” for OSHA’s June 29, 2010 Final Investigative Report, “Secretary’s Findings” for OSHA’s July 22, 2010 Findings, “Comp. Br.” for Complainant’s Brief, “Resp. Br.” for Respondent’s Brief, “Comp. Supp. Br.” for Complainant’s Supplemental Brief, “Comp.’s Add’l Pgs to Supp. Br.” for the additional pages Complainant added to his Supplemental Brief, and “EX” for Respondent’s Exhibits.

Discrimination in Employment Act, and the Family and Medical Leave Act.<sup>2</sup> The only alleged violations arguably relevant to his SOX complaint relate to his report of what he characterizes as a corporate ethics violation by his manager, Pat Weldon, regarding the award of contracts in October 2007 to Concorde Construction Company, which was owned by Weldon's brother. (EX A). Complainant further alleges that Respondent thereafter retaliated against him in a variety of ways, presumably at least in part because Weldon had learned of his complaint concerning the contract with Weldon's brother.

On July 22, 2010, the OSHA Regional Administrator dismissed the complaint as untimely inasmuch as he found that Complainant did not file his complaint with OSHA within 90 days of the date that any alleged adverse employment action took place. (Secretary's Findings).

On July 23, 2010, Complainant filed an objection to the Secretary's Findings and requested a *de novo* hearing before an Administrative Law Judge ("ALJ") pursuant to 29 C.F.R. § 1980.106.

On July 28, 2010, I issued a Notice of Docketing and Order to Show Cause why Complainant's complaint should not be dismissed as untimely.

On August 27, 2010, Respondent filed a response to my Show Cause Order, arguing that all retaliatory conduct alleged by Complainant occurred more than 90 days before May 10, 2010, the day he filed his SOX complaint with OSHA, and therefore the complaint should be dismissed as untimely. (Resp. Br. at 2).<sup>3</sup>

On August 31, 2010, Complainant filed his response to my Order to Show Cause arguing that his SOX complaint was timely under a continuing violation theory and that, if it was not timely, principles of equitable estoppel applied to toll the limitations period. According to Complainant, as recently as February 9, 2010, Respondent unlawfully altered his FMLA allotment as part of a pattern or practice of disciplining him because of the "SOX activity" which he began in August 2007. (Comp. Br. at 3). He further states that he

had a reasonable belief that fraudulent activity was being committed [in August 2007] all of which I reported to my supervisor (Nick Borodaj), the benefits officer (Philip Martin) for stock allocations and UAL payroll officers over discrepancies in my stock allocation post UAL exit from bankruptcy, and then again on October 20, 2007. On 10/10/2007 I sent a corporate email to senior UAL management complaining about a HOSTILE WORK ENVIRONMENT in my department and continued acts of discrimination in which I expressed a fear of retaliation after my personal involvement in a discrimination investigation.

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<sup>2</sup> For example, Complainant notes that he has filed "numerous EEOC charges against United Airlines for BLATANT violations of the ADA, ADAAA, FMLA, OSHA, to include refusal for a 'Reasonable Accommodation', refusal to allow [him] to exercise [his] qualified right for 'FMLA', [and] coerced and threatened with termination unless [he] work[ed] in a 'Confined Space by Permit Only', . . ." (EX A at 2) (emphasis in original).

<sup>3</sup> Respondent submitted with its brief a copy of Complainant's SOX complaint, filed with OSHA via facsimile on May 10, 2010. (EX A).

(Comp. Br. at 4) (emphasis in original). Complainant asserts that he continued thereafter to complain about “serious fraud” including

fraud . . . [involving] improperly awarding contracts to the company owned and operated by my manager’s brother. I believed that United was overpaying invoices and kickbacks were paid to his brother’s company. I reported that this manager’s brother in law was at times being paid by United Airlines for maintenance work that was not being completed at another facility which was leased by United Airlines but maintained by my manager’s brother in law and in part my UAL facility mechanics.

(Comp. Br. at 5).

On September 3, 2010, Complainant also sought permission to amend his May 10, 2010 complaint in order to allege that retaliatory conduct which occurred more than 90 days before the filing of his SOX complaint was actionable under a “hostile work environment” theory of liability. Complainant further stated that since he filed his SOX complaint on May 10, 2010, he has also learned of new or continuing violations that are relevant to his allegation that his hostile work environment claim is timely under the continuing violation doctrine.

On September 17, 2010, Respondent filed an Opposition to Complainant’s Motion for Leave To Amend Complaint (“Resp. Op.”). According to Respondent, Complainant’s motion “should be denied as futile, as it is devoid of: (1) a description of the alleged “new and continuing violations” that form the basis for his amendment request; (2) the dates upon which he learned of the alleged ‘new and continuing violations;’ or (3) a description of any activities protected by Section 806 of SOX that relate to the alleged ‘new and continuing violations.’” Resp. Op. at 3.

On September 22, 2010, I issued an Order directing the parties to file supplemental briefs in this case. Specifically, I instructed the parties to address: (1) whether Complainant had stated a *prima facie* case under SOX; (2) whether Complainant’s SOX complaint was timely filed; and (3) whether Complainant’s request to amend his May 10, 2010 whistleblower complaint should be granted.

Respondent filed a Supplemental Brief on October 22, 2010. In its brief, Respondent argued that Complainant has failed to state a *prima facie* case under SOX. It asserted that Complainant cannot establish he engaged in protected activity because none of his allegations “definitively and specifically” relate to the categories of fraud listed in Section 806 of SOX. Additionally, Respondent argued that Complainant’s request to amend his complaint should be denied. According to Respondent, amendment of a complaint is improper where such amendment falls outside the scope of the original complaint or when amendment would prejudice the parties’ rights or the public interest. Respondent requested that I dismiss the Complaint because (1) it is barred by the 90-day statute of limitations, and (2) Complainant has not established a *prima facie* case.

Complainant filed a Supplemental Brief on October 22, 2010, but submitted with it a letter stating that he was not able to adequately respond to my September 22, 2010 order due to medical reasons. On October 27, 2010, Complainant submitted a motion for an extension of thirty days to file his response to the September 22, 2010 order.

On October 28, 2010, I issued an Order Granting Complainant's Request for Extension of Time to File Supplemental Brief. In the Order, I informed Complainant that his response must specifically explain how any retaliation or discrimination he has allegedly suffered is related to activity which is protected under SOX, why his complaint is timely, and why he should be allowed to amend his previously filed complaint. I further warned Complainant that failure to do so could result in the dismissal of his complaint.

On December 2, 2010, Complainant filed a Supplemental Brief.<sup>4</sup> In explaining Respondent's acts of fraud, Mr. Simkus argued that United committed fraud when it improperly reported his work related injury as personal sick time. (Comp's Supp. Br. at 2). He asserted that

Mike Gray or someone from the AMFA union shredded my four grievances to protect the company and colluded with management to hide the truth that this was a "Hostile work environment." Mike Gray as Union steward also gave me FALSE information acting in collusion with the supervisor to eliminate my entitled vacation days from my allotment during the years 2000-2009. I had reasonable belief that this represented Organized crime within the company. It represented a violation of the RICO laws in which I believed to be activities that if continued would certainly rise to be violations of the 'SOX Act' itself.

(Comp's Supp. Br. at 3) (emphasis in original).

Other acts of fraud the Complainant alleged in his supplemental brief include: he did not receive his fair and equitable distribution of UAL stock that he was entitled to and that this represents mail fraud and wire fraud (Comp's Supp. Br. at 2); Respondent illegally posted an old overtime policy which was illegally enforced and that this is "[an] example of gross mismanagement, intentional deception, and inaccurate reporting or inadequate accounting controls under the 'SOX Act' which could and has created more Class-Action Law suits today" (Comp's Supp. Br. at 4); management failed to comply with OSHA laws (Comp's Add'l Pgs to Supp. Br. at 1); Respondent exposed employees to asbestos in their facilities, which poses a risk for future liability lawsuits, of which the cost would be passed on to the shareholders, creating fraud against the shareholders in violation of SOX (Comp's Add'l Pgs to Supp. Br. at 1); Employer failed to maintain critical equipment, such as York Chillers, which put the entire company at risk for major lost revenue. (Comp's Add'l Pgs to Supp. Br. at 3).

Mr. Simkus similarly made numerous additional claims of adverse personnel action that he allegedly suffered due to his engagement in protected activity, which include: Employer's

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<sup>4</sup> In addition to his supplemental brief submitted on December 2, 2010, Complainant submitted an additional five pages on December 8, 2010, which he asserts he accidentally omitted from his originally submitted supplemental brief. Due to the Complainant's *pro se* nature, I have taken these additional pages into consideration in analyzing his claim.

refusal to reasonably accommodate him on 3/30/09, interference with his FMLA paperwork on 4/21/09, on 6/5/09 by Bob Heatherington, and by recent payroll retaliation on 9/24/10 (Comp's Add'l Pgs to Supp. Br. at 3); threats, reports of theft, bad faith and delay to his worker's compensation settlement, his removal from dayshift, defamation, slander, denials for overtime, and refusals of FMLA rights (Comp's Add'l Pgs to Supp. Br. at 2); intentional interference with his payroll, affecting his ability to pay for medications and household bills (Comp's Supp. Br. at 2); placing him on extended sick leave and ignoring his request for reasonable accommodation for his participating in the SEC investigation and reporting fraud. (Comp's Supp. Br. at 9).

For the reasons stated below, I find Complainant has failed to establish a *prima facie* case of retaliation under SOX and that his complaint must therefore be dismissed. In doing so, I will assume without deciding that he should be allowed to amend the complaint as requested and that his complaint is timely.

### Discussion

Section 806 of the Sarbanes-Oxley Act and the implementing regulations at 29 C.F.R. Part 1980 prohibit retaliation by publicly traded companies against employees who provide information to a supervisory employee, a federal agency, or Congress, alleging violation of federal laws relating to certain types of fraud, including fraud against shareholders. 18 U.S.C. § 1514A(a), 29 C.F.R. § 1980.102(b). Because neither the rules governing hearings in SOX whistleblower cases, nor the rules governing hearings before ALJs, provide for dismissal of a complaint for failure to state a claim upon which relief can be granted, an ALJ must apply Federal Rule of Civil Procedure 12(b)(6) in determining whether to dismiss a complaint for failure to state a claim. *See* 29 C.F.R. 18.1(a) (Federal Rules of Civil Procedure "shall be applied in any situation not provided for or controlled by these rules, or by any statute, executive order or regulation."). Under Rule 12(b)(6), all reasonable inferences are made in the non-moving party's favor. *Fullington v. AVSEC Servs, L.L.C.*, ARB No. 04-019, ALJ No. 2003-AIR-030, slip op. at 5 (ARB Oct. 26, 2005). The burden is on the complainant to frame a complaint with "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2006).

To prevail on his SOX complaint, Complainant must establish that: (1) he engaged in a protected activity or conduct (*i.e.*, provided information or participated in a proceeding); (2) the Respondent knew that he engaged in the protected activity; (3) he suffered an unfavorable personnel action; and (4) the protected activity was a contributing factor in the unfavorable action. *See* 18 U.S.C.A. § 1514(b)(2); *Getman v. Southwest Sec., Inc.*, ARB No. 04-059, ALJ No. 2003-SOX-008 (ARB July 29, 2005).

"Protected activity" under the statute includes providing information to federal regulatory or law enforcement authorities, Congress, or a person with supervisory authority over the employee which the employee reasonably believes constitutes a violation of 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire, radio, TV fraud), 1344 (bank fraud), or 1348 (securities fraud), or any rule or regulation of the Securities and Exchange Commission (SEC), or any provision of federal law relating to fraud against shareholders. 18 U.S.C. § 1514A(a)(1); 29 C.F.R. § 1980.102(b)(1). The protected activity must "definitively and specifically" relate to any of the listed categories of

fraud or securities violations under 18 U.S.C. § 1514A(a)(1). *See Platone v. FLYi, Inc.*, ARB No. 04-154, ALJ No. 2003-SOX-27 (ARB Sept. 29, 2006). Additionally, the employee's belief that the employer's conduct constitutes a violation of one of these categories of fraud must be both subjectively and objectively reasonable in order for the activity to be protected. *See Harp v. Charter Communications, Inc.*, 558 F.3d 722, 723 (7th Cir. 2009); *Day v. Staples*, 555 F.3d 42, 54 (1st Cir. 2009).

Therefore, in order to establish the first element of a *prima facie* case, Complainant must allege that the activity he engaged in is protected under the whistleblower provisions of SOX. Unless Complainant blew the whistle by providing information related to his reasonable belief that Respondent engaged in mail fraud, wire fraud, bank fraud, securities fraud, or violated a rule or regulation of the SEC or a provision of federal law relating to fraud against shareholders, Complainant's activity is not protected by SOX's whistleblower provision. 18 U.S.C. § 1514A(a)(1). SOX's whistleblower provision does not protect employees that blow the whistle on corporate fraud in general. Rather, in order to constitute protected activity under the Act, the information that Complainant provided must concern a violation of one of the federal statutes or regulations specifically articulated in the SOX whistleblower provision. As the Administrative Review Board has held:

Providing information to management about questionable personnel actions, racially discriminatory practices, executive decisions or corporate expenditures with which the employee disagrees, or even possible violations of other federal laws such as the Fair Labor Standards Act or Family Medical Leave Act, standing alone, is not protected conduct under the SOX. To bring [oneself] under the protection of the act, an employee's complaint must be directly related to the listed categories of fraud or securities violations. 18 U.S.C.A. § 1514A(a); 29 C.F.R. §§1980.104(b), 1980.109(a). *See Getman*, slip op. at 9-10 (requiring that the employee articulate the nature of her concern). A mere possibility that a challenged practice could adversely affect the financial condition of a corporation, and that the effect on the financial condition could in turn be intentionally withheld from investors, is not enough.

*Harvey v. Home Depot, U.S.A., Inc.*, ARB Nos. 04-114, 115; ALJ Nos. 2004-SOX-020, 36, slip op. at 14 (ARB June 2, 2006). Therefore, any information that Complainant has provided related to his belief that Respondent violated Title VII, the OSH Act, ADA, ADEA, or the False Claims Act is not, standing alone, protected activity under SOX.

The facts alleged in Complainant's SOX complaint, his Response to the Show Cause Order, and his Supplemental Brief do not "definitively and specifically" relate Respondent's conduct to any of the listed categories of fraud or securities violations under 18 U.S.C. § 1514A(a)(1).<sup>5</sup> On the contrary, as noted above, Complainant has made rather vague and

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<sup>5</sup> Complainant's allegation that he provided information related to Respondent's violation of its corporate code of conduct is insufficient, on its face, to establish that Complainant engaged in protected activity under SOX. Similarly, that Complainant told his supervisor and corporate compliance officer that he believed that Respondent was overpaying invoices and paying kickbacks to his manager's brother's company also does not on its face fall into one of the specific categories listed in the SOX whistleblower provision. The same is true of Complainant's

nebulous allegations of corporate ethics violations, “serious fraud” involving kickbacks and the awarding of contracts, and discrepancies in his stock allocations occurring after Respondent emerged from bankruptcy. Complainant’s brief is also filled with rambling allegations that Respondent has violated a variety of federal labor and employment laws, none of which have any relevance to violations covered by the Sarbanes-Oxley Act.

I am required to construe Complainant’s pleadings liberally in deference to his *pro se* status and lack of training in the law. *See, e.g., Ubinger v. CAE Int’l*, ARB No. 07-083, ALJ No. 2007-SOX-036, slip op. at 6 (ARB Aug. 27, 2008) (quoting *Trachman v. Orkin Exterminating Co. Inc.*, ARB No. 01-067, ALJ No. 2000-TSC-003, slip op. at 6 (ARB Apr. 25, 2003)). Because of this, and given the rambling and unfocused nature of Complainant’s allegations in his original complaint and initial brief, I ordered the parties to file supplemental briefs so that I might better determine whether Mr. Simkus has sufficiently stated a *prima facie* claim under SOX. Unfortunately, Complainant’s supplemental pleadings have failed to provide any additional information which might support a Sarbanes-Oxley complaint.

Throughout Complainant’s initial complaint and supplemental briefs, he makes broad accusations of wrongdoing, but does not offer any facts relevant to establishing a *prima facie* SOX claim. For example, Complainant states: “[T]he disclosures over my ‘SOX’ activities were made several times in late September and October 2010. More protected participation occurred such as on the August 18, 2010 interview with senior manager Barbara Forest.” (Comp’s Supp. Br. at 2). While he further alleges that there were “deceptive financial disclosures” and “inadequate and inaccurate accounting controls,” Complainant does not give any details regarding what Respondent failed to disclose, how Respondent’s accounting controls were inadequate or inaccurate, his alleged reporting of such disclosures, inadequacies and inaccuracies, and how Respondent retaliated against him for disclosing such information. (Comp’s Supp. Br. at 9).

Similarly, in his response to my Order to Show Cause, Complainant also alleges he reported “shareholder fraud” to his supervisors. Complainant says he provided information to his superiors related to violations of Respondent’s corporate code of conduct, kickbacks paid to a company owned by his manager’s brother, and discrepancies in stock allocated to Complainant by Respondent. However, even if these facts are assumed to be true, none of them definitively and specially relate to any of the listed categories of fraud in § 1514A(a)(1), nor do they provide any basis for determining that Complainant reasonably believed Respondent committed shareholder fraud. For Complainant’s belief to be objectively reasonable, his “theory of [shareholder] fraud must at least approximate the basic elements of a claim of securities fraud.” *Van Asdale v. Int’l Game Tech.*, 577 F.3d 989, 1001 (9th Cir. 2009) (citing *Day v. Staples, Inc.*, 555 F.3d 42, 55 (1st Cir. 2009)). In the context of a SOX complaint, the elements of securities fraud are that someone: (1) made a material misrepresentation (or omission), (2) with the intent to deceive, manipulate or defraud, (3) in connection with the purchase or sale of a security, (4) on which the seller or purchaser reasonably relied, (5) causing economic loss to the shareholder. *Van Asdale*, 577 F.3d at 1001 (citing *Dura Pharm. Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005)). Thus, in order for Complainant’s activity to be protected, he would have to set forth facts

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statement that he informed supervisors about the “discrepancies in my stock allocation post [United Airlines’] exit from bankruptcy.” (Comp. Br. at 4).

demonstrating that he reasonably believed Respondent or one of its employees engaged in the conduct described above. Complainant has failed to do so.

In his supplemental brief, Complainant also makes numerous allegations of violations by Respondent of assorted federal labor and employment laws, but fails to clearly describe how any of Respondent's actions implicate a SOX violation. Specifically, Complainant alleges that Respondent committed fraud by improperly reporting his work related injury as personal sick time, illegally posting and enforcing an old overtime policy, failing to comply with OSHA laws, exposing employees to asbestos in their facilities, and failing to maintain critical equipment. Even if found to be true, none of these acts relate to any of the listed categories of fraud in § 1514A(a)(1). Similarly, general allegations involving the failure to make "fair and equitable" distributions of corporate stock do not establish mail, wire or shareholder fraud, as Complainant asserts. Moreover, Complainant has not set forth sufficient facts to demonstrate that he reasonably believed Respondent or one of its employees engaged in the alleged fraud. As noted above, SOX's whistleblower provision simply does not protect employees that blow the whistle on corporate fraud in general.<sup>6</sup>

### **Conclusion**

I find that Complainant has failed to state a claim upon which relief can be granted under Sarbanes-Oxley. Because I find that Complainant has failed to establish a *prima facie* case, I need not decide whether Complainant's SOX complaint was timely filed or whether he should be permitted to amend his complaint.

### **Order**

Based on the foregoing, IT IS HEREBY ORDERED that the Sarbanes-Oxley whistleblower complaint of Paul Simkus is DISMISSED.

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STEPHEN L. PURCELL  
Acting Chief Administrative Law Judge

Washington, D.C.

**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:

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<sup>6</sup> *See Harvey v. Home Depot, U.S.A., Inc.*, slip op. at 15 ("A mere possibility that a challenged practice could adversely affect the financial condition of a corporation, and that the effect on the financial condition could in turn be intentionally withheld from investors, is not enough.").

Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

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.

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: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) 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.

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: (1) 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 (2) 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, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

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 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).