

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
BOSTON, MASSACHUSETTS

Issue Date: 03 May 2016

CASE NO.: 2016-SOX-00012

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*In the Matter of:*

SCOTT MCMANUS,  
*Complainant,*

v.

TETRA TECH CONSTRUCTION, INC.  
AND TETRA TECH, INC.,  
*Respondents.*

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Before: Jonathan C. Calianos, Administrative Law Judge

Appearances:

R. Scott Oswald & John T. Harrington, The Employment Law Group, Washington, D.C.  
for the Complainant

Daniel J. Tyukody & Delilah Phiefer, Greenburg Traurig, LLP, Los Angeles, California  
for the Respondent

**DECISION AND ORDER GRANTING RESPONDENT'S MOTION TO  
DISMISS FOR UNTIMELINESS AND CANCELLING HEARING**

**I. Background**

This case arises under the employee protection provisions of the Sarbanes-Oxley Act of 2002 ("SOX"), 18 U.S.C. § 1514A(a), and its enforcement regulations found at 29 C.F.R. Part 1980. Scott McManus ("Complainant" or "McManus") filed a Complaint with the United States Department of Labor's Occupational Safety and Health Administration ("OSHA") alleging that Tetra Tech Construction, Inc. and Tetra Tech, Inc. (collectively "Respondent" or "Tetra Tech") terminated his employment in retaliation for engaging in protected activity. The Respondent filed a motion to dismiss arguing McManus's Complaint was untimely.<sup>1</sup> Specifically, the Respondent argues that the statute of limitations was triggered on January 27, 2015, when

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<sup>1</sup> References to the Respondent's Motion to Dismiss appear as "(Resp. MTD. at [page number])."

McManus received notice of his termination, but he did not file a Complaint until August 5, 2015 – nine days outside of the 180-day limitations period.<sup>2</sup>

## **II. Issue Presented**

Was the termination notice that McManus received on January 27, 2015, sufficiently “final, definitive, and unequivocal” so as to trigger the limitations period for filing a SOX Complaint? Accepting McManus’s allegations in his Complaint as true for purposes of this decision, I find that the termination notice received on January 27, 2015, triggered the limitations period for McManus to file a SOX Complaint. The notice provided on January 27, 2015 was sufficiently “final, definitive, and unequivocal” such that an objectively reasonable person under the circumstances would have believed that he had been terminated.

## **III. Factual Allegations<sup>3</sup>**

### **a. Scott McManus had a fourteen year career with Tetra Tech Construction and its predecessor company.**

In 2000, McManus began working for Delaney Construction. (Compl. ¶ 21). After Tetra Tech, Inc. acquired Delaney Construction in 2007, it named McManus as Director of Pre-Construction Services, a role in which he was authorized to approve or reject contracts. (Compl. ¶ 22). Around the first month of McManus’s role as Director of Pre-Construction Services, he refused to approve a contractor whose bid was about \$300,000 more than the lowest bidder with no apparent advantage otherwise to Tetra Tech. (Compl. ¶ 23). About a week later, Tetra Tech changed McManus’s position to Director of Business Development. (Compl. ¶ 24).<sup>4</sup> As Director of Business Development, McManus had no authority to approve or reject contracts, but his duties were otherwise unchanged. (Compl. ¶ 25). McManus worked out of the Tetra Tech office in Gloversville, New York. (Compl. ¶ 26).

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<sup>2</sup> The Respondent explained that its calculations indicate McManus actually filed the Complaint 190 days late, but for consistency it adopts OSHA’s conclusion that the Complaint was filed 189 days late. (Resp. MTD at 1 n.1).

<sup>3</sup> For purposes of this decision, all factual allegations are accepted as true and are copied almost verbatim from the Complaint McManus filed with OSHA on August 5, 2015, which is cited hereinafter as follows: “(Compl. ¶ [number]).” While it may go without saying, the Respondent disputes the majority of McManus’s factual allegations.

<sup>4</sup> Although it is not entirely clear, neither party suggests that McManus’s transfer from Director of Pre-Construction Services to Director of Business Development constituted a discriminatory act that would have triggered the statute of limitations.

**b. McManus had a successful tenure at Tetra Tech and its predecessor company, and McManus focused his efforts on the overall health of the company.**

As an employee of Tetra Tech, McManus remained constantly vigilant of costs. (Compl. ¶ 27). His group, the Wind Power division, tracked costs on a daily basis to ensure profitability. (Compl. ¶ 28). McManus worked on projects worth between \$30 million and \$100 million in annual revenue, and he consistently produced profit rates between seven and ten percent on those projects. (Compl. ¶ 29). In 2012, as a result of his success, McManus received a substantial bonus and a personal letter of commendation from the Chief Executive Officer (“CEO”) of Tetra Tech. (Compl. ¶ 30).

In 2014, Tetra Tech invited McManus to join about 25 other Tetra Tech employees (out of roughly 14,000 company employees) as participants in the Tetra Tech Leadership Program. (Compl. ¶ 31). The Tetra Tech Leadership Program included quarterly three-day conferences with senior management. (Compl. ¶ 32). At the first conference in 2014, McManus raised the issue, to the entire group, of responsibility to shareholders. (Compl. ¶ 33). McManus, in his remarks, emphasized that Tetra Tech needed to focus more on shareholders’ interests rather than individual needs. (Compl. ¶ 34). One of McManus’s colleagues stated that he worked for himself and his family, not shareholders. (Compl. ¶ 35). During the third meeting, McManus mentioned to Leslie Shoemaker, Executive Vice President (“VP”) of Water, Environment, & Infrastructure, that he believed the cost accounting process within Tetra Tech Construction, Inc. was not effective. (Compl. ¶ 36).

**c. Tetra Tech announced an overhaul of the corporate structure in summer 2014.**

On July 15, 2014, Tetra Tech announced a major reorganization. (Compl. ¶ 37). Around July 17, 2014, McManus met with Frank Gross, then the Executive VP of Remediation and Construction Management (“RCM”); Larry Brown, VP of RCM; and Patti Holcomb, the Human Resources (“HR”) Director of RCM. (Compl. ¶ 38). During this meeting, McManus learned that Tetra Tech, Inc. would end its transportation work and close its office in Gloversville, New York. (Compl. ¶ 39). Gross informed McManus that McManus, Kyle Settle, and Scott Lewis would form the core of the new management team in the restructured business unit. (Compl. ¶ 40). Later that same day, Gross, Brown, and Holcomb announced the upcoming changes to the

rest of the office. (Compl. ¶ 41). The planned changes included relocating the office to Houston, Texas. (Compl. ¶ 42).

**d. McManus first reported concerns about Tetra Tech’s monitoring of losses and expenses in summer 2014.**

Frank Gross subsequently invited McManus and Settle to accompany him to another meeting. (Compl. ¶ 43). At that meeting, Gross raised the issue of failing and unprofitable projects. (Compl. ¶ 44). McManus took the opportunity to describe to Gross “festering issues that ha[d] not been addressed” within Tetra Tech as a whole. (Compl. ¶ 45). McManus also sought reassurance from Gross that Tetra Tech would take steps to improve areas of concern, especially because the company wanted him to relocate his family to Texas. (Compl. ¶ 46).

During McManus’s tenure, many new construction projects had arisen at Tetra Tech, but nearly all of them became unprofitable by the end of the project’s timeline. (Compl. ¶ 47). Typically, projects showed profits for roughly the first two thirds of the project, but Tetra Tech often had to take large write-downs on projects as they wound down. (Compl. ¶ 48). Frequently, Tetra Tech started new projects as others wound down. (Compl. ¶ 49). In doing so, Tetra Tech used the initial high profitability of new projects to offset losses occurring on the other, ongoing projects. (Compl. ¶ 50). By the end of 2014, Tetra Tech had no new projects in the pipeline. (Compl. ¶ 51). With no new projects, Tetra Tech had no way to “backfill” or “cover” ongoing projects with initially-profitable new projects. (Compl. ¶ 52).

**e. Tetra Tech announced a number of other changes to the corporate structure in summer 2014.**

During the summer of 2014, a number of major changes occurred at Tetra Tech. (Compl. ¶ 53). In addition to the reorganization announced in July 2014, Tetra Tech announced that it would eliminate the transportation group in August 2014. (Compl. ¶ 54). Tetra Tech also announced it would shut down its energy division entirely, only to later state that it planned to sell the energy division to the Western Group, owned by Tim Delaney. (Compl. ¶ 55). Tetra Tech then again reversed course and shut down the energy division, selling off its assets and transferring operations to another entity. (Compl. ¶ 56).

**f. In October 2014, McManus again reported concerns about Tetra Tech’s accounting and losses.**

On October 7, 2014, McManus emailed Frank Gross and Bill Marine, Tetra Tech’s HR

Director, (Compl. ¶ 57), stating in part:

I am inquiring on our accounting on projects (lack thereof) and overall financial reporting as they relate to the SOX act, which relates to SEC compliance of the organization. I would like to understand the process more and discuss the areas where I feel we are not in compliance. This has been a concern of myself and others for some time and I am dissatisfied with the lack of attention it has received. The decision has been made to sell TCI and in turn report the organization as a discontinued operation – I am afraid this is the final attempt to cover up the officers of this company’s lack of SEC/SOX compliance and negligent handling of the organization’s business reporting.

(Compl. ¶ 58). McManus sent the email because he believed that there were compliance issues involving the improper reporting of losses. (Compl. ¶ 59).

For example, Tetra Tech had lost as much as \$35 million on three projects, including one known as the Parksville Project, which was a contract with the New York State Department of Transportation for Route 17. (Compl. ¶ 60). Other projects in which Tetra Tech lost significant amounts of money included contracts with the New Jersey Department of Transportation for the New Jersey Turnpike (Contract 701) and the New Jersey Turnpike Interchange (Contract 803). (Compl. ¶ 61). Another such project was with the North Carolina Department of Transportation for a section of highway on U.S. Route 220. (Compl. ¶ 62).

In each instance, upper management at Tetra Tech knew of impending losses, yet did not report the losses to shareholders until the projects ended. (Compl. ¶ 63). McManus also believed that Tetra Tech deliberately made it difficult to track costs on projects by changing the software system for tracking costs. (Compl. ¶ 64). In sending his email to Gross and Marine, McManus wanted to initiate a dialogue with Tetra Tech management about what he believed were serious issues regarding SOX compliance. (Compl. ¶ 65). McManus also wanted management to act on the issues he raised. (Compl. ¶ 66).

**g. McManus began to experience retaliation from Tetra Tech management within an hour of sending his email to Gross and Marine.**

Less than an hour after McManus sent the email to Gross and Marine, he received a call from Tetra Tech VP Leslie Shoemaker and Kevin McDonald, Senior VP of Corporate HR. (Compl. ¶ 67). Shoemaker and McDonald told McManus that he “had no future in the organization” and disinvited him from the fourth quarter Leadership Program session in California. (Compl. ¶ 68). McManus responded that he had just sent an email expressing concerns, and Shoemaker and McDonald had now told him that he had no future with Tetra

Tech. (Compl. ¶ 69). McManus also told Shoemaker and McDonald that in his email he had again raised concerns – as he had during leadership training – that the cost accounting system within Tetra Tech was ineffective and was leading to losses for the company. (Compl. ¶ 70). Only three months prior, Tetra Tech had ensured McManus that he had a future at the company. (Compl. ¶ 71).

The next day, October 8, 2014, McManus received a telephone call from Dan Batrack, President and CEO of Tetra Tech, and Steven Burdick, Executive VP and Chief Financial Officer of Tetra Tech. (Compl. ¶ 72). Batrack and Burdick apologized for the call that McManus had received from Shoemaker and McDonald, and assured McManus that he did have a future at Tetra Tech. (Compl. ¶ 73). McManus then told Batrack that he intended to do his part to help Tetra Tech wind down its energy products division. (Compl. ¶ 74). McManus concluded the call by reiterating that he was looking forward to hearing about future opportunities at Tetra Tech. (Compl. ¶ 75).

After learning that he had been disinvited from the Leadership Training, McManus emailed his colleagues, announcing that he would not be attending the training and that he had been informed he had no future at Tetra Tech. (Compl. ¶ 77). On November 13, 2014, Batrack held a teleconference to discuss company earnings. (Compl. ¶ 78). During the call, he mentioned a \$35 million expense for the Remediation and Construction Management group relating to winding down its business. (Compl. ¶ 79). Batrack said that \$20 million of the \$35 million related to costs associated with accelerating projects. (Compl. ¶ 80). McManus believed the number was an overstatement; and he believed that Tetra Tech made the overstatement to cover up past undisclosed losses. (Compl. ¶ 81).

Over the next several weeks, McManus provided updates on his work to Steve Ruffing, who was assigned by Tetra Tech to oversee the winding down of business of the Gloversville, New York office. (Compl. ¶ 82). On December 19, 2014, Ruffing asked McManus for a copy of his resume, which he provided to Ruffing on December 23, 2014. (Compl. ¶ 83-84). On December 31, 2014, Tetra Tech terminated several shop personnel. (Compl. ¶ 85).

#### **h. McManus's termination on January 27, 2015.**

On January 9, 2015, McManus received a 2.5 percent pay raise from Tetra Tech; and the company thanked him for his hard work. (Compl. ¶ 86). Yet eighteen days later on January 27, 2015, Ruffing told McManus that Tetra Tech was terminating his employment, effective in one

week. (Compl. ¶ 87). McManus told Ruffing that he had previously understood that Tetra Tech was planning discussions with him about his future opportunities at the company. (Compl. ¶ 88). Ruffing told McManus that he had looked into opportunities and found none for him. (Compl. ¶ 89).

McManus then asked about an undelivered project bonus due to him. (Compl. ¶ 90). Later that day, McManus received about half of the promised project bonus. (Compl. ¶ 91). When McManus confronted Ruffing about the smaller-than-expected bonus amount, Ruffing told him, for the first time, that Tetra Tech had planned to terminate him “a while ago” in the fall of 2014. (Compl. ¶ 92). McManus responded by telling Ruffing his concerns about potential accounting and securities violations by Tetra Tech. (Compl. ¶ 93).

Later in the day on January 27, 2015, McManus sent another email to senior management, again reporting his concerns about SEC and SOX violations. (Compl. ¶ 94). In the same email, McManus noted, without explanation, that he only received about half of the project bonus due him. (Compl. ¶ 95). McManus was not actually terminated one week after receiving the notice from Ruffing but remained employed until March 18, 2015. (Compl. ¶ 96 & 99). It is this delay of 50 days that McManus argues made his termination equivocal or uncertain. But during this period McManus had very little work to do as Tetra Tech did not assign him any new tasks, even after McManus asked for additional work. (Compl. ¶ 97). Instead, McManus kept himself busy with work related to winding down old projects. (Compl. ¶ 98).

#### **IV. Standard of Review**

Many courts have treated motions to dismiss for untimeliness as Rule 12(b)(6) motions for failure to state a claim upon which relief may be granted; but where each party treats the Respondent’s motion as a jurisdictional question, I find it more appropriate to apply the standard under Rule 12(b)(1) regarding motions to dismiss for lack of subject matter jurisdiction.<sup>5</sup> A Rule 12(b)(1) motion can be presented in one of two ways: (1) as a “facial attack” or, (2) as a “factual attack.” *See Mortenson v. First Fed. Sav. & Loan Ass’n.*, 549 F.2d 884, 891 (3d Cir. 1977);

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<sup>5</sup> *See* Fed. R. Civ. P. 12(b)(1) & (6); *Turin v. Amtrust Fin. Servs., Inc.*, ARB No. 11-062, ALJ No. 2010-SOX-018, at \*2 n.2 (ARB Mar. 29, 2013) (treating motion to dismiss for untimeliness as motion for summary decision where neither party raised any objection); *Poli v. Jacobs Eng’g Group, Inc.*, ARB No. 11-051, ALJ No. 2011-SOX-027 (ARB Aug. 31, 2012) (reversing and remanding order that dismissed Complaint as untimely on motion for summary decision); *see also Levi v. Anheuser-Busch Cos., Inc.*, ALJ No. 2006-SOX-037, at \*4 (ALJ May 3, 2006) (indicating “Respondent’s timeliness objection . . . represents a motion to dismiss for lack of subject matter jurisdiction”).

*Ohio Nat'l Life Insur. Co. v. U.S.*, 922 F.2d 320, 325 (6th Cir. 1990); *see also Levi*, 2006-SOX-037, at \*5. Treating Respondent's motion as a "facial attack" requires looking at the face of the Complaint to determine whether, assuming its alleged facts to be true, it is sufficient on its face to establish timeliness. *Mortenson*, 549 F.2d at 891; *Ohio Nat'l Life Insur. Co.*, 922 F.2d at 325; *see also Levi*, 2006-SOX-037, at \*5. Conversely, if Respondent's motion is treated as a "factual attack," I need not presume that the Complaint's factual allegations are true and may consider evidence outside of the pleadings offered in support of the motion. *Mortenson*, 549 F.2d at 891; *Ohio Nat'l Life Insur. Co.*, 922 F.2d at 325; *see also Rhoades v. U.S.*, 950 F. Supp. 623, 628 (D. Del. 1996); *Levi*, 2006-SOX-037, at \*5. While the form of the Respondent's Rule 12(b)(1) motion is unclear, for reasons discussed further in this opinion I do not find it necessary to look outside the four corners of the Complaint in rendering a decision.

## V. Discussion

McManus's claim for relief is time barred. Under SOX, it is unlawful for a covered entity to discharge an employee for disclosing conduct he reasonably believes may violate any rule or regulation of the Securities and Exchange Commission, or any other Federal law relating to fraud against shareholders. 18 U.S.C. § 1514A(a). An action under SOX "shall be commenced not later than 180 days after the date on which the violation occurs, or after the date on which the employee became aware of the violation." 18 U.S.C. § 1514A(b)(2)(D); *see also* 29 C.F.R. § 1980.103(d). Essentially, "[t]he time limitation for a SOX Complaint begins to run from the date that the complainant 'knows or reasonably should know that the challenged act has occurred.'" *Turin*, 2010-SOX-018, at \*6 (internal citation omitted). In determining what McManus knew or reasonably should have known, he must be measured against an objectively reasonable person under the same circumstances with the same experience and training. *Id.* at \*7; *Snyder v. Wyeth Pharms.*, ARB No. 09-008, ALJ No. 2008-SOX-055, at \*6 (ARB Apr. 30, 2009).

If, for example, McManus received what an objectively reasonable person would have considered "final, definitive, and unequivocal" notice of Respondent's unfavorable and unlawful employment action against him, then the limitations period was triggered. *See Turin*, 2010-SOX-018, at \*6-7; *Poli*, 2011-SOX-027, at \*5; *Snyder*, 2008-SOX-055, at \*6. In other words, "[t]he date that an employer communicates a decision to implement such a decision, rather than the date the consequences of the decision are felt, marks the occurrence of the violation." *Poli*,

2011-SOX-027, at \*5 (internal citation omitted). Tetra Tech’s notice of McManus’s termination was unequivocal if it was free from ambiguity and misleading possibilities. *Id.* Whistleblower Complaints often present widely varying circumstances, so application of the foregoing principles must be made on a case-by-case basis. *Del. State Coll. v. Ricks*, 449 U.S. 250, 258 n.9 (1980); *Poli*, 2011-SOX-027, at \*5.

Accepting all allegations in McManus’s Complaint as true, an objectively reasonable person, similarly situated to McManus, would have understood that he was terminated on January 27, 2015, when the parties completed their discussions. Ruffing directly told McManus that his employment would be terminated, effective in one week. (Compl. ¶ 87).<sup>6</sup> After learning of his termination, McManus responded that he had expectations of future opportunities with the company. (Compl. ¶ 88). McManus actually gave Ruffing his resume a few weeks prior. (Compl. ¶ 84). Ruffing’s response that no opportunities existed, should have alerted McManus that this termination was real. But, there was more. Ruffing also disclosed that “Tetra Tech had planned to terminate . . . [McManus] ‘a while ago’ in the fall of 2014.” (Compl. ¶ 92). This should have struck a chord with McManus as this correlates to the October 7, 2014 phone call he had with senior management informing him that he “had no future in the organization.” (Compl. ¶ 68). Additionally, as the termination conversation continued on January 27, 2015, McManus brought up his unpaid bonus. (Compl. ¶ 90). This indicates that McManus certainly had some sense that this termination was real as he was trying to collect what was owed him before being forced to exit the company. In response, he only received one half of his expected bonus and no explanation from the company why the full bonus was not paid. (Compl. ¶ 92, 95). Given these facts, an objectively reasonable person would have concluded that this termination was real.

Still focusing on the date of his termination discussion, McManus does something else very revealing – he sends another email to senior management reiterating his concerns that the company is violating SOX. (Compl. ¶ 94). McManus sent a similar email in the fall of 2014, and he was immediately threatened that he had no future with the company. (Compl. ¶ 58, 68). In 2014, after reiterating to senior management that their threat came on the heels of his SOX complaint, within one day, McManus received a call from Tetra Tech’s CEO apologizing for the

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<sup>6</sup> Ruffing’s statement to McManus is distinguishable from cases such as *Poli*, for example, where the Board held that the alleged termination notice was too equivocal where the employer told the complainant that “every reasonable effort will be made to return you to the same position, if it is available, or to an equivalent position for which you are qualified.” 2011-SOX-027, at \*6. No such facts exist here.

threat and reassuring McManus that he was a valued employee. (Compl. ¶ 69-73). However, after sending this second SOX email on January 27, 2015, McManus received no response from Tetra Tech. There was no call from the CEO revoking McManus’s termination or providing any assurance that he had a future with Tetra Tech.

Moreover, looking at the fifty day period from when McManus was told he would be terminated to the date he was actually terminated, McManus stated that he had very little work and was given no additional work even when he asked for more. (Compl. ¶ 97). He also stated that he kept himself busy with work relating to “winding down projects.” (Compl. ¶ 98). These facts are not indicative of a viable, ongoing employment relationship, but rather indicate that McManus was being used to wind up Tetra Tech’s business affairs with a clear end in sight.

While McManus correctly points out that his termination was not effective until March 18, 2015, it is still not enough to make the notice of termination he received on January 27, 2015 not “final, definitive, and unequivocal.” A landmark Supreme Court case that paved the way for jurisprudence on this topic is *Del. State College v. Ricks*, 449 U.S. 250 (1980). In *Ricks*, the plaintiff was a black librarian at Delaware State College who was denied tenure on March 31, 1974. *Id.* at 252. Delaware State had a policy of not immediately discharging untenured faculty, so on June 26, 1974, the plaintiff was offered a 1-year “terminal” contract after which the employment relationship would end on June 30, 1975. *Id.* at 253. The plaintiff alleged a “continuing violation” of the civil rights laws such that the statute of limitations was not triggered until his “terminal” contract ended in June of 1975. *Id.* at 257. Rejecting the plaintiff’s argument, the Court surmised as follows:

Mere continuity of employment, without more, is insufficient to prolong the life of a cause of action for employment discrimination. If *Ricks* intended to complain of a discriminatory discharge, he should have identified the alleged discriminatory acts that continued until, or occurred at the time of, the actual termination of his employment.

*Id.*; see also *Chardon v. Fernandez*, 454 U.S. 6, 8 (1981).

Similarly here, the mere continuity of McManus’s employment for a period of 50 days while conducting functions characterized exclusively as winding down operations in the office where McManus worked, cannot extend the life of this SOX action. There was nothing that occurred after January 27, 2015 that would lead a reasonable person to conclude that the termination was not “final, definitive, and unequivocal.” To the contrary, there was every

indication that Tetra Tech was done with McManus and they were using him to merely wind up their business affairs.

## **VI. Order**

Based on the foregoing, I find that an objectively reasonable person, similarly situated to McManus, would have understood that the termination notice received on January 27, 2015 was “final, definitive, and unequivocal” so as to trigger the running of the limitations period for filing a SOX Complaint. Because McManus filed his Complaint nine days outside of the 180-day statute of limitations period, the Complaint is untimely and the Respondent’s Motion to Dismiss is **GRANTED**. The hearing scheduled to commence on August 2, 2016 is **CANCELLED**.

**SO ORDERED.**

**JONATHAN C. CALIANOS**  
Administrative Law Judge

Boston, Massachusetts

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: [Boards-EFSR-Help@dol.gov](mailto: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. § 1980.110(a). Your Petition should identify the legal conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

When 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 on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. *See* 29 C.F.R. § 1980.110(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. §§ 1980.109(e) and 1980.110(b). 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. § 1980.110(b).