



Issue Date: 24 April 2019

Case No.: **2018-SOX-00024**
OSHA No.: **2-1750-18-008**

In the Matter of:

KRISHNAMURTHY SIVAKUMAR,
Complainant,

v.

COGNIZANT TECHNOLOGY SOLUTION,
Respondent.

DECISION AND ORDER DISMISSING COMPLAINT

This action arises under the employee protection provisions of § 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A (“Act” or “SOX”).

PROCEDURAL HISTORY

On March 25, 2018, Complainant filed an online complaint with the Regional Administrator of the Occupational Safety and Health Administration (“OSHA”), stating that he suffered the following types of “adverse action” on December 21, 2015: “termination / layoff,” “harassment / intimidation,” and “negative performance evaluation.” *Complaint* at 1.

On April 27, 2018, the Regional Administrator of OSHA notified Complainant that OSHA had completed its investigation and that it was dismissing the complaint because it was not timely filed. *OSHA Dismissal Letter* at 1.

On May 3, 2018, Complainant filed objections to the finding and requested a hearing before an Administrative Law Judge. (Admin. R.).

On September 7, 2018, this Court issued *Notice of Assignment and Notice of Hearing and Pre-Hearing Order* (“*Pre-Hearing Order*”).

On September 25, 2018, Complainant filed a response (“*C. Response to Pre-Hearing Order*”) to the September 7, 2018 *Pre-Hearing Order*, stating in pertinent part:

a. Whether the complainant's complaint to the OSHA and appeal to the OALJ timely filed?

Answer – The complaint to the OSHA was not timely filed and the complaint was dismissed after an investigation by the OSHA in April 2018. However, an appeal was made to the OALJ timely, the appeal was admitted by the OLAJ to condone the delay in filing the complaint to the OSHA and a preliminary order was issued on 2nd August 2018. Consequently, based on the response to the preliminary order, the order containing the 'Notice of Assignment and Notice of Hearing and Notice of Pre-hearing' was issued on 7th September 2018.

In summary the delay in filing the complaint has been **CONDONED BY THE OLAJ**.

C. Response to Pre-Hearing Order at 1 (errors in original).

On October 23, 2018, Respondent filed *Respondent Cognizant Technology Solution's Motion to Dismiss* ("Resp't Mot. to Dismiss").

On October 30, 2018, this Court issued *Order that Complainant Show Cause Why Respondent's Motion to Dismiss Should Not be Granted*.

On November 6, 2018, Respondent filed *Notice of Correction* "to advise the Court that [] [Respondent] inadvertently misstated the holding in *Walls v. Weatherford Servs., Ltd.*, ALJ No. 2017-SOX-17, 2018 BL 197308 (Dep't of Labor 2018) in its October 23, 2018 Brief in Support of Its Motion to Dismiss." *Notice of Correction* at 1 (internal citation omitted).

On November 16, 2018, Complainant filed an opposition to Respondent's *Motion to Dismiss* ("C. Opp'n").

On January 9, 2019, Respondent filed *Cognizant Technology Solution's Reply Brief in Support of its Motion to Dismiss* ("Resp't Reply Br.").

On March 20, 2019, this Court issued *Order Continuing the Hearing*.

LEGAL STANDARDS

I. Motion to Dismiss

Pursuant to the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges ("Rules"), at 29 C.F.R. Part 18, Subpart A, a party "may move to dismiss part or all of the matter for reasons recognized under controlling law, such as lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted, or untimeliness." 29 C.F.R. § 18.70(c). The regulations at 29 C.F.R. § 1980.101, *et seq.*, and the Act do not clarify the procedure for addressing a motion to dismiss. The Administrative Review

Board (“ARB”), the Federal Appellate Circuit courts, and the Federal Rules of Civil Procedure¹, however, provide insight into this issue.

Rule 12(b) of the Federal Rules of Civil Procedure addresses motions to dismiss. Specifically, Rule 12(b) covers, *inter alia*, motions to dismiss for lack of subject-matter jurisdiction, lack of personal jurisdiction, and failure to state a claim upon which relief can be granted. FED. R. CIV. P. Rule 12(b)(1)-(2), (6).

A motion to dismiss is a facial challenge, focusing “solely on the allegations in the complaint, its amendments, and the legal arguments the parties raised – not whether evidence exists to support such allegations.” *Id.* at *6 (citing *Neuer v. Bessellieu*, ARB No. 07-036, ALJ No. 2006-SOX-00132, slip op. at 4 (ARB Aug. 31, 2009)). In fact, the consideration of evidence marks the material difference between a motion to dismiss a complaint based on a “facial challenge at the initial stages of litigation and a motion for summary decision.” *See id.*; compare 29 C.F.R. § 18.70(c) with 29 C.F.R. § 18.72(a), (c).

II. Untimely Filing of OSHA Complaint

The Act at 18 U.S.C. § 1514A(b)(2)(d) requires that a complainant must file a complaint within 180 days. *See also* 20 C.F.R. § 1980.103(d) (requiring a complainant to file a complaint “[w]ithin 180 days after an alleged violation of the Act occurs or after the date on which the employee became aware of the alleged violation of the Act”). This filing period under SOX is not a jurisdictional requirement; accordingly, it may be equitably tolled. *See Moldauer v. Canandaigua Wine Co.*, ARB No. 04-22, ALJ No. 2003-SOX-00026 (ARB Dec. 30, 2005); 20 C.F.R. § 1980.103(d) (“[t]he time for filing a complaint may be tolled for reasons warranted by applicable case law”); *see also Socop-Gonzalez v. INS*, 272 F.3d 1176, 1188 (9th Cir. 2001) (quoting *Holmberg v. Ambrecht*, 327 U.S. 392, 397 (1946)) (“We take as our starting place the presumption, read into ‘every federal statute of limitation,’ that filing deadlines are subject to equitable tolling.”). Equitable tolling, “[a]s a general matter, . . . pauses the running of, or ‘tolls,’ a statute of limitations when a litigant has pursued his rights diligently but some extraordinary circumstance prevents him from a timely action.” *Lozano v. Montoy Alvarez*, 572 U.S. 1, 10 (2014).

The ARB recognizes “four principal situations in which equitable modification of filing deadlines may apply. *See Brown v. Synovus Fin. Corp.*, ARB No. 17-037, ALJ No. 2015-SOX-00018, slip op. at 1 (ARB May 17, 2017). The ARB lists these situations as follows:

- (1) when the defendant has actively misled the plaintiff regarding the cause of action;
- (2) when the plaintiff has in some extraordinary way been prevented from filing his action;
- (3) when the plaintiff has raised the precise statutory claim in issue but has done so in the wrong forum, and
- (4) where the defendant’s own acts or omissions have lulled the plaintiff into foregoing prompt attempts to vindicate his rights.

¹ “The Federal Rules of Civil Procedure . . . apply in any situation not provided for or controlled by [the 29 C.F.R. Part 18] rules, or a governing statute, regulation, or executive order.” 29 C.F.R. § 18.10(a).

Id. (citing *Selig v. Aurora Flight Scis.*, ARB No. 10-072, ALJ No. 2010-AIR-00010, slip op. at 3 (ARB Jan. 28, 2011)). “[Complainant] bears the burden of justifying the application of equitable tolling principles.” *Id.* at *2 (citation omitted).

The ARB’s standards are largely identical to the standards for equitable tolling recognized in federal courts. Federal courts typically allow tolling “where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period,” and “where the complainant has been induced or tricked by his adversary’s misconduct into allowing the filing deadline to pass.” *Irwin v. Dep’t of Veterans Affairs*, 498 U.S. 89, 96 (1990) (listing cases). Federal courts are generally much less forgiving in “receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights[,]” *id.* (citing *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 151 (1984)), though they recognize that certain extraordinary circumstances may still warrant tolling. *See Holland v. Florida*, 560 U.S. 631, 649 (2010).

These patterns of equitable tolling were formulated into a succinct doctrine by the United States Supreme Court. In federal practice, a party is “entitled to equitable tolling of a statute of limitations only if the litigant establishes two elements: ‘(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.’” *Menominee Indian Tribe of Wis. v. United States*, 136 S. Ct. 750, 755 (2016) (citing *Holland*, 560 U.S. at 649). A party seeking equitable tolling in the federal courts bear the burden of proving both elements. *Id.* at 756 (citing *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)).

Equitable tolling is a discretionary doctrine; it “turns on the facts and circumstances of a particular case . . . [and] does not lend itself to bright-line rules.” *Harris v. Hutchison*, 209 F.3d 325, 330 (4th Cir. 2000) (quoting *Fisher v. Johnson*, 174 F.3d 710, 713 (5th Cir. 1999)). However, “any invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes.” *Id.* Generous application of equitable tolling “would lose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation.” *Id.* Accordingly, any resort to equitable tolling is reserved for rare circumstances where enforcing the limitation period would be unconscionable and gross injustice would result. *Id.*; *Stoll v. Runyon*, 165 F.3d 1238 (9th Cir. 1999) (citing *Alvarez-Machain v. United States*, 107 F.3d 696, 700 (9th Cir. 1996)).

PARTIES’ ARGUMENTS

I. Timeliness of Filing of Complaint

Respondent argues that Complainant’s complaint is untimely because it was not filed within the 180 days mandated by the Act and the regulations. *Resp’t Mot. to Dismiss* at 2–4. Based on Complainant’s statement in his complaint to OSHA that he was terminated on December 21, 2015, Respondent asserts that “Complainant did not file his Complaint with OSHA until March 25, 2018 – 825 days after his termination.” *Id.* at 3. Respondent also notes that Complainant has conceded the untimely filing of his complaint in his Initial Statement. *See id.* (citing *C. Response to Pre-Hearing Order* at 1). Respondent further argues that “whether

Complainant timely appealed OSHA's dismissal of his Complaint has no bearing on – and is irrelevant to – whether his OSHA Complaint was filed in a timely manner.” *Id.* at 4 (footnote omitted). Moreover, Respondent asserts that Complainant cannot argue that Respondent “somehow prevented him from filing his complaint in a timely manner,” and that “Complainant was required to file a SOX retaliation complaint by June 18, 2016.” *Id.* at 4 n.2 (citations omitted).

In response, Complainant argues:

- a) I made a complaint to the Government of India in about 135 days within the limit of 180 days (please refer pages 6 and 7 in this docket) about violation of SOX, sections 404 and 806 after the Respondent and its subsidiary (Cognizant Technology Solutions India Pvt. Ltd) took adverse action on the complainant.
- b) The Government of India instead of Honouring the treaty of ICCPR through prosecution of the Respondent and its subsidiary for having violated the provisions of SOX in the Indian soil, chose to remain inactive despite knowing the fact that the Respondent's subsidiary is liable for SOX compliance through the statutory filings made by the Respondent's subsidiary (please refer pages 4 and 5 in this docket). If the Government of India had honoured my complaint through its diplomatic channel, the argument of question of law on the grounds of timelines would not have been a subject matter[.]

Violation of the ICCPR is a major cause that affects the United States of America and defeats the fundamental purpose of international treaties. If the Respondent's motion to dismiss is granted on the flimsy grounds of timelines, such an ORDER will set a dangerous precedence and motivate the Respondent to commit cross border violation of SOX. There is absolutely no audit mechanism that exists with the Respondent to implement SOX in its subsidiaries though it is liable to do so.

C. Opp'n at 1 (errors in original).

Respondent, in its *Reply Brief*, avers that “Complainant is not entitled to equitable tolling because he failed to exercise due diligence in asserting his claims before OSHA.” *Resp't Reply Br.* at 3. Respondent asserts the following in support of its argument:

First, equitable tolling does not apply because Complainant failed to exercise any diligence in preserving his legal rights. Complainant was required to file with OSHA and has not justified his failure to do so. . . . Even if Complainant's original failure to file with OSHA could be excused, the August 2016 letters from Cognizant India and the Government of India's Ministry of Corporate Affairs provided Complainant with actual and constructive knowledge that he should have pursued his rights in the U.S. Yet, he still waited almost another two more years before doing so. This lack of diligence precludes the application of equitable principles to save his untimely complaint.

Second, when courts grant equitable tolling for failure to file a timely complaint in the correct forum, the complainant must have “raised the precise statutory claim in issue but [have] mistakenly done so in the wrong forum.” This requires that the ‘wrongly filed claim must be the same claim as the OSHA complaint ultimately filed.’ As an initial matter, where a complainant fails to attach a copy of his original complaint allegedly filed in the wrong forum, as he did here, he cannot establish that he is entitled to equitable tolling. In addition, Complainant’s May 6, 2016 letter to the Indian government differs materially from his current complaints. The earlier letter did not allege that Complainant engaged in any protected activity or suffered retaliation a result, and it in no way relates to his current claim that he made complaints “alleg[ing] offences that amount to defrauding shareholders, lack of internal financial controls which includes tampering of the accounting systems, misappropriation of shareholders’ funds to reward the relatives of senior officials employed with the Respondent, and presenting inaccurate financial reports to its shareholders.” Because Complainant did not allege in his earlier complaint the same statutory claims he now seeks to bring, equitable tolling cannot excuse his delayed, time-barred filing.

Id. at 4–5 (citations omitted).

II. Extraterritorial Application of SOX

Respondent argues “[b]ecause all events giving rise to his claim occurred outside the United States, any application of SOX to this alleged claim would be extraterritorial and, therefore, improper.” *Resp’t Mot. to Dismiss* at 9. In support of its argument, Respondent asserts: (1) “courts, including the ARB have held that SOX has no extraterritorial application because the text of the anti-retaliation section of SOX (18 U.S.C. § 1514A(a)) does not reveal any clear Congressional intent for SOX to apply extraterritorially”; (2) “even if SOX applied extraterritorially, the vast majority of the events giving rise to this claim occurred outside of the United States”; and (3) “Complainant’s allegations do not have any significant domestic connections. Complainant’s claims involve alleged violations that took place in India and that involves the Indian government.” *Id.* at 4–9 (citations and footnotes omitted).

In response, Complainant argues:

- a) In the case of *Blanchard vs Exelis Sys Corp*, ARB No. 15-031, AU No. 2014-SOX-20 held under the Supreme Court’s decision in *RJR Nabisco, Inc vs European community*, 136 S.Ct 2090 (2016) that (i) the SOX whistleblower provision does apply extraterritorially, and (ii) even if did not, the allegations in the complaint were sufficiently connected to the U.S. such that extraterritorial application of the statute was necessary.
- b) The question of law whether extraterritorial application of SOX is needed is out of question because the Respondent’s subsidiary in their own statutory filings have made statements that its operations comes under the purview of

SOX (please refer pages 4 and 5 in this docket), the Respondent or its subsidiary cannot exempt from or comply with the provisions of SOX at their will, without any doubt, the Respondent's subsidiary along with the Respondent is liable for SOX compliance

- c) The Respondent's subsidiary was founded and funded using the shareholders funds of the Respondent, the Respondent's subsidiary is not a publicly held company in India, therefore the Respondent's subsidiary is accountable to the resident shareholders of the Respondent and are governed by SOX
- d) The spirit of any law has to be such that it does not provide loopholes to the Respondent to violate SOX outside the United States, the law has to take control of Respondent's resort to violate SOX outside the United State because SOX was not enacted to allow the Respondent to violate it. Whether SOX has been violated in the United States or outside the United States, it is the shareholders and the investors who trade in the NASDAQ whose interests are jeopardized. It is the joint responsibility of self and this Honourable Court to prevent offenders as in this instant case 'the Respondent' to escape through the loop holes. On my part, I have pursued with this instant case to bring the Respondent before Justice and leave it to this Honourable Court to decide whether a loop in the law or the Justice that will prevail
- e) The Respondent and its subsidiary are one integrated entity who honour one single contract with their clients, they submit one consolidated statutory report to SEC and DOJ, they share one complaint handling mechanism and have multiple management personnel from the Respondent's subsidiary reporting into the Chief Executive and his sub-ordinates of the Respondent. This Hon. Court may please be considerate to the argument that there are definite and serious ramifications to the sovereignty and integrity of United States and the allegations in this instant case carries connections to the ramifications.

C. Opp'n at 1–2 (errors in original).

Respondent refutes Complainant's claims in his opposition, stating, "SOX does not apply to Complainant's claim relating to his employment termination because it does not regulate employment decisions made by foreign individuals at foreign companies in foreign countries involving foreign conduct." *Resp't Reply Br.* at 9. Respondent asserts that, "[e]xtraterritorial application of SOX is impermissible where the Complainant worked entirely in a foreign country for a foreign subsidiary and shows no relationship between his conduct and U.S. securities fraud." *Id.* at 10. Respondent concludes that, "Complainant is incorrect when he asserts that because a U.S. parent company is subject to SOX, any acts occurring in India by Indian personnel at a separate Indian company also must create the basis for a SOX retaliation claim." *Id.*

III. Sufficiency of Complaint

Respondent argues that Complainant fails to state a claim upon which relief can be granted, stating in pertinent part:

[T]he Complaint broadly charges that Cognizant engaged in ‘violations of Sarbanes Oxley Act,’ and as a result, suffered ‘termination/layoff, harassment/intimidation, and negative performance evaluation(s).’ Complainant provides no details or notice regarding the nature of these violations, nor does he indicate whether he made any complaints, to whom he made them, who purportedly retaliated against him, or any circumstances giving rise to an inference causation.

Resp’t Mot. to Dismiss at 9–10.

In response, Complainant argues:

- a) I made multiple complaints to the Respondent, Respondent’s Chief Legal Officer and the Chief Executive Officer using their complaint mechanism and direct communication, the complaints are enclosed in pages 13 to 26[.]
- b) All these complaints allege offences that amount to defrauding of the Respondent’s shareholders, lack of internal financial controls which includes tampering of the accounting systems, misappropriation of shareholders funds to reward the relatives of senior officials employed with the Respondent, and presenting inaccurate financial reports to its shareholders[.]
- c) Based on my complaint along with a few others, the investigation reports of the Government of India is presented in pages 27 to 34[.]
- d) The United States SEC (Securities and Exchange Commission) is conducting an information based on the information provided about violations of SOX, investigation letter is presented in page 35[.]

C. Opp’n at 2 (errors in original).

In its *Reply Brief*, Respondent reiterates its arguments made in its *Motion to Dismiss*, and asserts the following: (1) “Complainant has not alleged that he engaged in SOX protected conduct”; (2) “Complainant provides no facts or documents to suggest he raised any complaints to the Indian Government relating to shareholder fraud during his employment”; and (3) “Complainant does not identify who at Cognizant had knowledge of any purported complaint or any facts from which there even could be a causal link between this alleged complaint and his December 2015 employment termination.” *Resp’t Reply Br.* at 7–9.

DISCUSSION

The Respondent’s argument regarding the untimeliness of Complainant’s complaint is meritorious on its face. *See Resp’t Mot. to Dismiss* at 2–4. There is no triable issue of fact

regarding the untimeliness of the filings; nor is the application of equitable tolling appropriate. *See id.* at 3–7.

I note that Complainant is *pro se*, and the ARB has stated that administrative law judges must “construe complaints and papers filed by *pro se* complainants, ‘liberally in deference to their lack of training in the law’ and with a degree of adjudicative latitude.” *Wyatt v. Hunt Transp.*, ARB No. 11-039, ALJ No. 2010-STA-00069, slip op. at 3 (ARB Sept. 21, 2012) (quoting *Trachman v. Orkin Exterminating Co. Inc.*, ARB No. 01-067, ALJ No. 2000-TSC-00003, slip op. at 6 (ARB Apr. 25, 2003)).

Complainant’s multiple filings have been considered in their entirety, and even construing the record “liberally in deference” to his unrepresented status, I still find them insufficient to avoid dismissal. Complainant’s filings contain no credible factual allegation or legally sufficient argument supporting a finding that the long-expired statute of limitation should be tolled on equitable grounds. Stated differently, it is uncontroverted that Complainant’s complaint was filed well beyond the applicable time to file without legal or equitable justification.

In sum, I find that Respondent’s timeliness argument is well-founded. No filing associated with the complaint before me occurred within the period of time allowed, nor has Complainant met his burden of justifying the application of equitable tolling principles.

Accordingly, the remaining issues of whether extraterritoriality application to SOX is appropriate and whether Complainant has stated a claim upon which relief can be granted are **MOOT** and will not be further addressed.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that the complaint in the above-captioned matter is **DISMISSED WITH PREJUDICE**.

LARRY S. MERCK
Administrative Law Judge

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

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).