



**Issue Date: 23 December 2011**

OALJ No: 2011-STA-00028  
OSHA No: 5-2210-07-004

**JAMES JACK ELIAS,**  
Complainant,

v.

**CELADON TRUCKING SERVICES,**  
Respondent.

**Decision and Order Granting Summary Decision  
Dismissing Claim**

The Complainant, Mr. Elias, addressed an “open letter” that sought to reopen an old case to entities within the U.S. Department of Labor, including the Office of Administrative Law Judges (OALJ). The Chief Administrative Law Judge received the open letter dated March 28, 2011 on April 1, 2011, along with another document entitled “Appeal to the Chief Administrative Law Judge.” Mr. Elias asked for a hearing to review findings and an order OSHA had entered on a complaint he made in 2006 against the Respondent, Celadon Trucking Services (Celadon), under § 405 of the Surface Transportation Assistance Act (STAA).

I ordered Mr. Elias, on April 20, 2011, to specify the OSHA findings and order that he wanted the Department to change. He identified them as the OSHA findings and order dated February 23, 2007 in OSHA case No. 5-2210-07-004.

Celadon moved to dismiss this matter on September 2, 2011, in a pleading styled a “Pre-Hearing Motion to Dismiss with Prejudice.” It alleged that Mr. Elias’ current request for hearing was untimely because the period available for him to seek review of OSHA’s February 23, 2007 findings and order had expired years before he filed his March 28, 2011 “open letter.”

Mr. Elias was told in an order of September 22, 2011 that I would treat the motion as one for summary decision, that he could submit affidavits or declarations to support any facts he relied on in

opposing the motion, and that his argument based on those facts had to be filed by October 21, 2011. A copy of the procedural rule on summary decision was included too.

Mr. Elias filed his Statement in Opposition on October 24, 2011 and his Second Declaration to Show Why Request for Review Should not be Dismissed as Untimely on November 18, 2011.

The OSHA determination letter dated February 23, 2007 warned that the “Respondent and Complainant have 30 days from the receipt of these Findings to file objections and to request a hearing before an Administrative Law Judge (ALJ). If no objections are filed, these Findings will become final and not subject to court review.”<sup>1</sup> Mr. Elias concedes he received those findings two months after they were issued.<sup>2</sup> He also concedes that he “had the knowledge, skill and competence to prepare and submit an objection within 30 days to the Office of Administrative Law Judges. [He] was aware of [his] right to do so and of the time limit for filing.”<sup>3</sup>

Mr. Elias has acknowledged dispositive facts. I find that the objections and notice of appeal he filed in the form of an “open letter” dated March 28, 2011 from the OSHA findings and order dated February 23, 2007 in OSHA case No. 5-2210-07-004 are untimely and time barred. No review is available now. This matter is dismissed with prejudice.

So Ordered.

A

William Dorsey  
ADMINISTRATIVE LAW JUDGE

San Francisco, California

**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 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. In

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<sup>1</sup> See OSHA findings dated February 23, 2007 filed by Complainant.

<sup>2</sup> See Complainant letter dated April 26, 2011.

<sup>3</sup> Complainant's Statement in Opposition, page 6.

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. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

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. §§ 1978.109(e) and 1978.110(a). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1978.110(a) and (b).