



Issue Date: 13 November 2015

ARB No: 13-015

Case No: 2011-STA-00011

In the Matter of:

FERNANDO DEMECO WHITE, *pro se*,

Complainant,

v.

ACTION EXPEDITING, INC.,

Respondent.

DECISION AND ORDER ON REMAND – DENYING COMPLAINT

The above matter is a complaint of employment discrimination under Section 31105 of the Surface Transportation Assistance Act of 1982, as amended (STAA). The case was referred to the Office of Administrative Law Judges for formal hearing on Appeal by Complainant of the Occupational Safety and Health Administration October 8, 2010, determination which dismissed the Complainant's case.

The initial formal hearing was held on May 10, 2011 in Atlanta, Georgia with a subsequent formal hearing held on August 25, 2011 in Atlanta, Georgia. This presiding Judge issued a "Decision and Order – Denying Complaint" on October 12, 2012. The Complainant filed an appeal of the decision to the Administrative Review Board on November 14, 2012.¹

By "Decision and Order of Remand" issued on June 6, 2014, the Administrative Review Board affirmed the findings that –

- a. The Complainant "engaged in protective activity by complaining to his supervisor that Respondent's practice of splitting sleeper berth time into five hour increments, where drivers were required to drive five hours, then sleep five hours before driving again for five hours, violated federal regulations";

¹ ARB Case No. 13-015

- b. The Complainant engaged in protective activity “by refusing to drive between 11:30 and midnight on September 15, 2009, during a refueling stop, because of a headache and temporarily impaired vision”; and,
- c. The Complainant’s “employment termination [was] adverse action covered under the STAA.”

The Administrative Review Board vacated the October 12, 2012 Decision and Order and remanded the case for a determination of the following issues remaining on remand –

- (a) Whether the Complainant has established by a preponderance of the evidence that his protected activity was a “contributing factor” in the adverse employment action taken against him;
- (b) If so, has the Respondent established by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected activity; and,
- (c) If not so established by the Respondent, what is the appropriate remedy under the STAA.

By Order issued August 29, 2014, this presiding Judge found that a supplemental hearing was not necessary based on the evidence of record submitted by the Parties in this case and granted leave for the Parties to submit a supplemental brief on the issues remanded by the Administrative Review Board in this case. Both Parties have submitted briefs on remand which have been considered. The evidence of record has also been considered.²

ISSUES

The sole remaining issues in this case upon remand are:

1. Whether the Complainant has established by a preponderance of the evidence that his protected activity was a “contributing factor” in the adverse employment action taken against him;
2. If so, has the Respondent established by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected activity; and,
3. If not so established by the Respondent, what is the appropriate remedy under the STAA.

POSITIONS OF THE PARTIES

Position of Complainant

The Complainant submits that he was terminated by Respondent’s Safety Director, J. Wentz because of his refusal to drive while impaired due to illness from 11:30 PM, September 15, 2009 to 12:45 AM, September 16, 2009, since that was the sole conflict he had with his supervisor, dispatcher L. Kyle, at the time. He reported he received a “Termination Action Notice on September 18, 2009 which stated he was discharged “based on his actions between September 14, 2009 and September 17, 2009 ... [and] was fired for failure to transport without delay

² A summary of the Relevant Evidence was set forth in the Decision and Order issued by this presiding Judge on October 31, 2012.

enroute.” He argues that (1) his refusal to drive while impaired was close proximity in time to his termination and creates the inference that his termination was due to that protected activity; (2) his objection to slitting sleeper berth time in 5 hour increments and refusal to drive while impaired could upset delivery schedules and were a motive for Respondent to terminate his employment; (3) Respondent’s safety director was hostile to Complainant for Complainant’s interpretation of 49 CFR §395.1(g) concerning sleeper berth time; (4) Respondent’s dispatcher was hostile to Complainant for protected activity on September 15 and 16, 2009 which motivated the safety director to terminate his employment; (5) Respondent stated termination was delay enroute between September 14 and 17, 2009 which Complainant submits was due to Complainant not driving while impaired; and (6) Respondent’s articulated reasons for termination are not credible.

The Complainant argues the Respondent has not established that it would have discharged the Complainant absent his protected activity because the Termination Notice was based on his actions between September 14 to 17, 2009 and dissatisfaction in transporting the one load assigned for that period. He submits that the dissatisfaction in transporting the load was due to his refusal to drive while impaired and his actions with Respondent during the period centered around communications involving protected activity that cannot be separated from other motives to terminate his employment.

The Complainant seeks reinstatement as a driver, back pay based on an average weekly wage of \$974.53 less wages earned elsewhere since termination, compensatory damages in the amount of \$50,000.00, punitive damages of \$250,000.00, interest on back pay at the IRS underpayment of tax rate from 29 U.S.C. §6621 compounded quarterly, costs incurred in pursuing the action, notice posted by the Respondent for 90 days, and expunge from all personnel records and other reports to third parties any reference to an unfavorable work record entries of Complainant.

Position of Respondent

Respondent submits that the Complainant’s protected activity of objecting to splitting berth time in 5 hour increments was first presented to Respondent shortly after the Complainant was hired in May 2009 and that the “Complainant’s employment remained relatively uneventful through September 15, 2009.” Respondent submits that after the Complainant parked his truck in Memphis on September 15, 2009 to obtain toll money on the fuel credit card, he called Respondent to advise that the toll money was not available, was directed by Respondent to continue his trip without delay, the Complainant refused to continue until money was placed on the fuel card, and that such actions were unprofessional and belligerent “to the point that Complainant could act in an unpredictable way that would cause him to be a danger to his co-driver and the public.” Respondent submits that it was sometime after this refusal to drive until toll money was placed on the fuel card that Complainant reported he was unfit to drive while impaired and that in response to this report the Respondent requested the Complainant seek medical assistance at the Respondent’s expense but he refused medical assistance, which led Respondent to direct Complainant to turn-over the truck keys to the co-driver to continue the route without delay but the Complainant refused to do so and remained parked at the Memphis truck stop until toll money was placed on the fuel card two hours later, at which time the Complainant began driving again. Respondent submits that the Complainant was terminated for

unwillingness to seek medical assistance and refusal to allow the co-driver to continue driving the truck to avoid delays which would jeopardize customer relationships.

Respondent argues that the Complainant's protected activity of objecting to splitting sleeper berth time into 5 hour increments and refusing to drive after reporting himself ill on September 16, 2009 did not contribute to the Complainant's employment termination. He submits that Respondent's safety director, J. Wentz made the decision to terminate the Complainant's employment "based entirely upon Complainant's unprofessional conduct on the road" by Complainant refusing to move his truck until toll money was placed on the fuel card, declining medical assistance to determine if he was fit to drive after reporting he was impaired by illness to drive, refusing to relinquish control of the truck to the co-driver after co-driver was requested to take over driving. Such actions by Complainant being considered belligerent and unprofessional conduct while on the road.

Respondent submits that the Complainant was not credible when his log books and e-mails in evidence are compared to his testimony and the Complainant's actions in attempting "to manipulate purported testimony by deposition by M. Smith prior to the hearing" are evaluated. Respondent also argues that an inference of causal connection due to proximity in time between protected activity and adverse employment action no longer applies since the Title VII burden shifting provisions of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) no longer applies to STAA cases³ and the Complainant has failed to establish by a preponderance of the evidence that protected activity contributed to his firing.

Respondent seeks to have the complaint be denied because the Complainant has failed to establish by a preponderance of the evidence that protected activity contributed to his termination and because the Respondent has established by clear and convincing evidence that the Complainant was terminated for reasons independent of protected activity.

DISCUSSION

By its "Decision and Order of Remand," the Benefits Review Board affirmed Findings of Fact 1 through 8 set forth at pages 42 and 43 of the "Decision and Order – Denying Complaint" issued by this presiding Judge on October 31, 2012. Findings of Fact 9 through 12 were necessarily vacated by the direction to re-adjudicate the three issues remaining on remand.

- I. The Complainant has failed to establish by a preponderance of the evidence that his protected activity was a "contributing factor" in the adverse employment action taken against him.

To establish a prima facie case of unlawful retaliation under STAA at the adjudication level, the Complainant must prove by a preponderance of the evidence (1) that he engaged in protected activity, (2) that the employer had knowledge of the protected activity, (3) that he was subjected

³ This position is in error. Depending on the facts of the particular case, temporal proximity of protected activity to adverse employment action may give rise to the inference that the protected activity was a contributing factor in the adverse employment action. See *Beatty v. Inman Trucking Management, Inc.*, ARB No. 13-039, *12; ALJ Nos. 2008-STA-020, -021 (ARB May 13, 2014)

to an adverse employment action with respect to his compensation, terms, conditions, or privileges of employment, and (4) that the protected activity was a contributing factor in the adverse employment action. *Fordham v. Fannie Mae*, ARB No. 12-061, ALJ No. 2010-SOX-51, 2014 WL 5511070 (ARB Oct. 9, 2014) citing *Bechtel v. Administrative Review Board, U.S. Dept. of Labor*, 710 F.3d 443 (2nd Cir.2013); *Gale v. U.S. Dept. of Labor*, 384 Fed. Appx. 926 (11th Cir. 2010) *unpub*; *Stone v. Webster Engineering Corp. v. Herman*, 115 F.3d 1568 (11th Cir. 1997) Protected activity is a contributing factor if “the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer’s decision.” 76 FR 68087 (Nov. 3, 2011)⁴ “If the employee does not prove one of these elements, the entire complaint fails.” *Coryell v. Arkansas Energy Services, LLC.*, ARB No. 12-033, ALJ No. 2010-STA-042, 2013 WL 1934004, *3 (ARB Apr. 25, 2013)

When evaluating if protected activity is established as a contributing factor in the Complainant’s prima facie case, Respondent’s evidence of lawful, non-retaliatory reasons for taking adverse employment action are not considered as rebuttal evidence; however, Respondent’s evidence otherwise rebutting Complainant’s evidence on the issue of causation is relevant and considered. This is because at the evidentiary stage of formal hearing on the merits of the case, the Complainant is required to prove the four elements of a prima facie case by a preponderance of evidence and not by merely alleging circumstances sufficient to raise an inference that the protected activity was a contributing factor to an adverse employment action. See *Fordham v. Fannie Mae*, ARB No. 12-061, ALJ No. 2010-SOX-051 (ARB Oct. 9, 2014) citing *Bechtel v. Administrative Review Board, U.S. Dept. of Labor*, 710 F.3d 443 (2nd Cir. 2013); *Coryell v. Arkansas Energy Services, LLC*, ARB Case No. 12-033, ALJ Case No. 2010-STA-042 (ARB Apr. 25, 2013) [no contributing factor where evidence established managers deciding to fire employee did not know of protected activity.]

The Complainant testified that that when he began driving truck in May 2009 he was directed to split sleeper berth time in 5-hour periods and that he reported this to his then supervisor L. Kyle⁵ and that he reported to safety director J. Wentz that sleeper berth time was to be split 8 and 2. He also testified that he continued to drive over-the-road truck using the 5 hour sleeping berth split times. The Complainant testified he was driving when the truck departed the home terminal at 4:00 PM, September 15, 2009, drove to Birmingham, and drove to Memphis where he stopped about 11:00 PM for toll money being placed on the fuel card. He testified that he exited the truck, used the bathroom, purchased water and Goody’s medicine, confirmed toll money had not been placed on the fuel card and returned to the truck. The Complainant testified he sat in the driver’s seat and experienced headaches and vision problems to his wife and co-driver M. Smith. He testified that M. Smith offered to begin driving at midnight when he would have 8 hours of sleeping berth time completed. The Complainant also testified that he reported the headaches and vision problem to supervisor R. Baxter and subsequently to D. Harty, who told him to call 911 and declined to permit M. Smith to drive him to the hospital. The Complainant testified he

⁴ In *Fordham* the majority held that the ALJ erred in considering evidence the Respondent had introduced in support of its contention of legitimate, non-retaliatory reasons for taking the adverse personnel action during the decisional process on whether the complainant had met her burden under SOX of proving ‘contributing factor’ causation. The ARB has elected to readdress this rationale *en banc* in the case of *Powers v. Union Pacific Railroad Co.*, No. 13-034, ALJ No. 2010-FRS-30, 2014 WL 5511088 (ARB Oct. 17, 2014)

⁵ Complainant testified that truck driver R. Baxter became his supervisor in August 2009.

knew that the Respondent would pay for an ambulance and cab to the hospital. He testified that he began driving again when he felt better and completed the delivery about 5:00 AM, September 16, 2009, then completed paperwork and slept. He testified M. Smith drove through the time it took to reach Kansas City where he obtained toll money from the fuel card.

The Complainant testified that when he awoke in Kansas City he send R. Baxter an e-mail that they were three hours behind schedule. He testified he told R. Baxter they were behind because they would not let M. Smith drive, they refused to let M. Smith drive him to the hospital, and that there had been construction. This contradicts his earlier testimony that he was instructed by Regional Manager D. Hardy to call 911 for medical assistance and is contradicted by other evidence that he was instructed to give the truck keys to M. Smith so M. Smith could continue the scheduled delivery trip and his testimony that M. Smith offered to drive at midnight, 12 hours after the Complainant had begun driving. This diminishes the credibility of the Complainant and his version of the events.

M. Smith testified that he was the Complainant's co-driver on the delivery run to Chicago that started on September 15, 2009. He testified the Complainant stated J. Wentz was supposed to put money on the fuel card for tolls through Chicago but had not done so before the start of the trip and said there was no toll money on the fuel card at the Memphis stop. He testified that he was in the back bunk of the truck in Memphis when the Complainant tried to call J. Wentz but did not get an answer and then called R. Baxter and D. Hardy. He testified that he did not know if the Complainant was sick or not, they just sat at the truck stop for a while before the Complainant said he had a headache. He testified that he offered to take over driving so the Complainant could rest. He stated that the Complainant had several phone calls and someone told the Complainant to call an ambulance and he asked if M. Smith could drive him to the hospital but was told no, which M. Smith assumed was because the supervisors did not want to interfere with his rest time. He testified he was in the sleeper berth when they left at 4:00 PM and when they arrived in Memphis at 11:00 PM and that he could have driven then for a limited period of time. M. Smith testified that they just sat in Memphis a good two hours and then Complainant began driving again for some unknown reason. M. Smith testified that when they returned to Lithia Springs, Georgia, R. Baxter had the Complainant get out of the truck to sign termination papers and he was directed to park the truck. He stated he dropped the trailer at the freight door, separated the tractor and trailer, completed the required federal inspection of the truck and did the post-trip paperwork.

Safety Director J. Wentz testified that he was brought into the issues of September 15, 2009 involving the Complainant, when the Complainant refused to drive until money for upcoming tolls was placed on the fuel card. He testified he made sure the funds were placed on the fuel card⁶ and then the Complainant was reporting he was ill to drive. J. Wentz directed the supervisors to have the Complainant taken to the hospital to determine if he was fit to continue driving and to have the co-driver take over to continue driving the scheduled route. On cross-examination by the Complainant, J. Wentz testified that the company offered to call the Complainant an ambulance but he refused, that the Complainant refused to go to the hospital for medical attention and that the Complainant refused a hotel room in Memphis to recover from his

⁶ It is noted the Complainant did not check the fuel card for toll money after his initial check in Memphis between 11:00 PM and 11:30 PM September 15, 2009 until Kansas City at 5:00 AM, September 16, 2009.

reported illness. He testified that there was no reason the co-driver could not have driven to the Complainant to the hospital other than the Complainant's refusal to turn the truck and keys over to the co-driver. He reported the company's intent included having another truck pick up the Complainant in Memphis and return him to Georgia due to the reported illness.

J. Wentz testified that he did not recall giving any driver direction to split sleeper berth time in 5 hour increments, and that while driving teams could split sleeper berth times, a driver could not drive more than 11 hours without a 10 hour break. He also testified he did not recall being on a speaker phone with the Complainant discussing sleeper berth time and that he had no evidence or knowledge of anyone ever even inferring the Complainant would be terminated if he did not split sleeping berth time in 5 hour increments. He stated that the Complainant had not been disciplined for any impropriety based on his driver log entries, which were routinely reviewed by J. Wentz as the Safety Director. J. Wentz testified that he had no knowledge of any conflict involving sleeper berth time and that was not a factor in his decision to terminate the Complainant.

L. Kyle testified that he did not remember putting the Complainant on speaker phone with J. Wentz to discuss sleeper berth time. He also testified the Complainant never made any safety complaints to him.

This presiding Judge finds that the Complainant's testimony involving the two protected activities affirmed by the Benefits Review Board is inconsistent with more credible evidence and witness testimony and less than fully credible.⁷ The testimony of J. Wentz is consistent and worthy of greater weight than Complainant's testimony.

Upon deliberation of the credible evidence of record, this presiding Judge finds that the Complainant has failed to establish by a preponderance of the evidence that his reports to immediate supervisors involving sleeper berth 5-hour split time was not a contributing factor to J. Wentz's decision to terminate the Complainant.

This presiding Judge also finds that the Respondent acted properly in addressing the Complainant's alleged medical issue by directing and offering ambulance transportation to the hospital for medical service and evaluation and offering to provide hotel lodging in Memphis if required for recovery from the alleged illness. The expressed intent to transport the Complainant back to Georgia by another company truck was not communicate by the company to the Complainant; but is consistent with the manner in which the Respondent did not order the Complainant to drive while ill but did direct the Complainant to turn over the truck to the co-driver to continue the route and for the Complainant to report back to supervisors when he was well enough to continue driving. When all the credible evidence is considered, this Administrative Law Judge finds that the Complainant has failed to establish by a preponderance of the evidence that his refusal to drive while ill was a contributing factor to his termination.

In view of the findings that the Complainant has failed to establish by a preponderance of the evidence that protected activity was a contributing factor to the adverse employment termination,

⁷ A detailed evaluation of the Complainant's lack of credibility is set forth in pages 37 through 41 of the Decision and Order issued by this presiding Judge on October 31, 2012.

the Complainant has failed to establish all elements of his case under STAA and his complaint must be denied.

II. The Respondent has established by clear and convincing evidence that it took the adverse action for reasons unrelated to the Complainant's protected activity.

If the Complainant proves a prima facie case under STAA when before the Administrative Law Judge, the Respondent will not be held to have violated STAA if it establishes by clear and convincing evidence that the adverse employment action was the result of events and/or decisions independent of the protected activity. "Clear and convincing evidence is 'evidence indicating that the thing to be proved is highly probable or reasonably certain.'" *Coryell v. Arkansas Energy Services, LLC.*, ARB No. 12-033, ALJ No. 2010-STA-042, 2013 WL 1934004, *3 (ARB Apr. 25, 2013) quoting *Warren v. Custom Organics*, ARB No. 10-092, ALJ No. 2009-STA-030, 2012 WL 759335, *5 (ARB Feb. 29, 2012); *Klosterman v. E.J. Davies, Inc.*, ARB No. 12-035, ALJ No. 2007-STA-019, 2013 WL 143761 (ARB Dec. 18, 2012)

While the Complainant has failed to establish by a preponderance of the evidence that protected activity contributed to his employment termination, the Respondent has established by clear and convincing evidence that the Complainant was terminated for belligerent refusal to follow orders to turn over the truck keys and driving to his co-driver when directed prior to midnight on September 15, 2009 and belligerent refusal to accept medical treatment, transportation and related lodging at company expense.

J. Wentz testified that he made the decision to terminate the Complainant's employment on September 17, 2009 due to unprofessional conduct because he refused to continue his assigned route without toll money being placed on the fuel card, became very belligerent, and became detrimental to the safety of his co-driver and the public. He testified that when he was made aware that the Complainant was reporting he was ill and not driving, he directed the supervisors to have the Complainant taken to the hospital to determine if he was fit to drive and to have the co-driver take over the driving. He testified that the company offered to call the Complainant an ambulance but he refused, that the Complainant refused to go to the hospital for medical attention and that the Complainant refused a hotel room in Memphis to recover from his reported illness. He testified that there was no reason the co-driver could not have driven to the Complainant to the hospital other than the Complainant's refusal to turn the truck and keys over to the co-driver. He reported the company's intent included having another truck pick up the Complainant in Memphis and return him to Georgia.

J. Wentz testified that the company has a contract with Mitsubishi that requires auto parts to be delivered to specific locations at specific times and it is a service failure if the delivery is not on time, which could lead to loss of the customer's business. He testified that the delay in delivery on September 16, 2009 was problematic in terms of customer relations. He also testified that the decision to terminate the Complainant was based on the Complainant's behavior and that the delay on September 16, 2009 and customer service were not factors in the termination decision.

After deliberation on the credible evidence of record, this presiding Judge finds that the Respondent has established by clear and convincing evidence that the Complainant's

employment was terminated based on the Complainant's personal belligerent actions and unprofessional conduct on September 15 and 16, 2009, and that such action was warranted and proper even without consideration of the Complainant's protected activity.

III. The Complainant is not entitled to relief under the STAA.

The Complainant is not entitled to relief under the STAA unless he establishes by a preponderance of the evidence that (1) he engaged in protected activity, (2) that the employer had knowledge of the protected activity, (3) that he was subjected to an adverse employment action with respect to his compensation, terms, conditions, or privileges of employment, and (4) that the protected activity was a contributing factor in the adverse employment action. As noted above, the Complainant has failed to establish that protected activity was a contributing factor to his employment termination. Accordingly, the Complainant is not entitled to relief under the STAA.

Additionally, even if the Complainant had established all four elements of proof required under the STAA, the Respondent has established by clear and convincing evidence that the Complainant's employment termination was taken for reason unrelated to protected activity under the STAA. Accordingly, the Complainant is not entitled to relief under the STAA.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The findings of fact and conclusions of law in the Decision and Order issued by this presiding Judge on October 31, 2012 and affirmed by the Benefits Review Board in its Decision and Order is sued June 6, 2014 are hereby incorporated by reference.
2. The Complainant has failed to establish by a preponderance of the evidence that his protected activity was a "contributing factor" in the adverse employment action taken against him.
3. The Respondent has established by clear and convincing evidence that it took the adverse action for reasons unrelated to the Complainant's protected activity.
4. The Complainant is not entitled to relief under the STAA.

ORDER

It is hereby Ordered that **the Complaint filed January 29, 2010 is DENIED.**

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, VA

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. § 1978.110(a). Your Petition must specifically identify the findings, 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. § 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).

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. §§ 1978.109(e) and 1978.110(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. § 1978.110(b).