

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 27 March 2013

CASE NO.: 2012-STA-00031

IN THE MATTER OF

**JAMES VAN TERRY,
Complainant**

v.

**MAVERICK TRANSPORTATION, LLC,
Respondent**

DECISION AND ORDER

This proceeding arises under the Surface Transportation Assistance Act, 49 U.S.C. § 31105 (“STAA” or “Act”), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, and the regulations promulgated thereunder at 29 C.F.R. Part 1978. The STAA prohibits covered employers from discharging or otherwise discriminating against employees who have engaged in certain protected activities with regard to their terms and conditions of employment.

On or about February 22, 2012, Complainant filed a complaint against Maverick Transportation, LLC (“Respondent”) with the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor (DOL), complaining of retaliation in violation of the employee protection provisions of the STAA. Complainant was terminated on October 27, 2011. (CX-6). An investigation was conducted by OSHA and on May 23, 2012, the Regional Supervisory Investigator for OSHA concluded that Respondent did not violate the STAA. (CX-7, pp. 5-9). Complainant subsequently filed a request for formal hearing with the Chief Administrative Law Judge, Office of Administrative Law Judges. (CX-7, p. 3).

A hearing was held in Memphis, Tennessee on October 10, 2012. The parties were afforded a full opportunity to adduce testimony, offer documentary evidence and submit post-hearing briefs. Complainant exhibits 1-9 were offered and admitted into evidence. (CX). Respondent exhibits 1-8 were offered and admitted into evidence. Based upon the evidence introduced, my observations of the demeanor of the witnesses, and having considered the arguments presented in post-hearing briefs, I make the following Findings of Fact, Conclusions of Law and Recommended Order.

FINDINGS OF FACT

1. Complainant began working for Respondent on October 15, 2008 as an over-the-road interstate commercial motor vehicle driver. Respondent is a motor carrier subject to the Surface Transportation Assistance Act (STAA). Complainant was assigned to Respondent's flatbed division to operate tractor-trailer vehicle combinations using flatbed trailers.
2. In October 2011, Tim Sales was Complainant's immediate supervisor. Dave Peak was Respondent's fleet operations manager, and Brett Graves was Respondent's Director of Safety and Compliance.
3. Respondent's drivers use an electronic on board recorder (EOBR) system for creating logs, which they are trained in when they start their employment, including how to edit log entry mistakes. The EOBR system monitors truck movement and automatically changes drive status from "on-duty/not driving" to "on-duty/driving" and vice versa when the truck has started moving or stopped for several minutes. The driver must manually override the system to change his status to and from off-duty.
4. On October 20, 2011, Complainant requested personal time off for a family reunion, to begin at 8:00 a.m. on October 27, 2011, and end at 8 a.m. on October 31, 2011. On October 25, 2011, Sales notified Complainant via the Qualcomm Satellite System that he was working on getting him home on October 27, 2011 so that he could attend the family reunion.
5. Sales advised Complainant he was working to arrange for another driver to meet Complainant in the West Memphis, Arkansas area, so that the other driver could take the assigned load on to St. Louis, allowing Complainant to remain in the West Memphis area for his requested time off. At 1:21 p.m. on October 25, 2011, Sales dispatched Complainant to pick up a load in El Dorado, Arkansas consigned to Home Depot in St. Louis, Missouri, due for delivery at 10:00 a.m. on October 27, 2011. Sales told Complainant to call him upon pick up of the load in El Dorado, Arkansas. Complainant then made arrangements to pick up family members at the Memphis airport who were flying in for his family reunion.
6. On October 26, 2011, Complainant rose around 2:00 a.m., and logged on duty around 4:30 a.m. in El Dorado, Arkansas. He began driving at 4:57 a.m. and drove to the shipper in El Dorado, Arkansas, arriving between 5:00 and 5:30 a.m. The trailer was loaded. At 11:18 a.m., Complainant notified Sales he was headed for Memphis, Tennessee, and he drove directly to Marion, Arkansas.
7. Complainant was driving through Little Rock, Arkansas on his way to Memphis, Tennessee around 1:01 p.m. on October 26, 2011. He phoned Sales to obtain information about the other driver with whom he was to swap trailers. Sales was not able to speak with Complainant, but Complainant was informed by another fleet manager that the trailer swap was on schedule, but could not provide him with the other driver's cell phone number. Complainant gave the fleet manager his cell number to give to the other driver.

8. At 4:05 p.m., Complainant called Sales and informed him he would be parking in Marion, Arkansas to meet the other driver for the trailer swap. Sales told him to continue to his parking spot. At 4:08 p.m., Sales called Complainant and told him the other driver was out of position for the trailer swap, and that he would check on the status of the other driver and call Complainant back.
9. Complainant parked at the Marion, Arkansas exit just off Interstate 55 around 4:30 p.m. on October 26, 2011. He began recording his status as “off duty” on his record of duty status because he believed he was going to be going home. At 5:22 p.m., Complainant sent a Qualcomm message to Sales indicating he was still standing by and asking for a status report; he had not been relieved of responsibility for the load that he picked up in El Dorado. Complainant alleges that he realized he had been remaining in a state of readiness to drive but he did not know how to correct his log to on-duty status. However, given Complainant’s experience and training in the EOBR system, I do not find this testimony credible.
10. At 8:54 p.m., Sales went a message to Complainant that the relay driver had driven to North Little Rock. At 9:34 p.m., Sales notified Complainant that the other driver had quit his job. He told Complainant to take the load to St. Louis, Missouri and deliver it by 10:00 a.m. on October 27, 2011.
11. Complainant refused to take the load, and Sales notified him that refusing could result in termination.
12. At 10:33 p.m., Complainant sent Sales a message via the Qualcomm system that stated:

Tim jst wanted to say something to you. Got up after our conversation, after I was coherent, and wanted to say thanx for staying up and working on this. I know how this all went down from top to bottom and I know ur probably worried bout ur jub tomorrow but they wld be idiots to fire you and they wont. Me is a different story. You did ur job more so than most and you shld be commended however I know whats coming down tomorrow morning but le tme tell you a load of lumber is not worth losing ur integrity over. May also interest you to know the guy who runs Home Depot’s north American network worked for me at UPS in Alpharetta, Georgia. He was fired over sexual harassment allegation that I had to report. Whatever happens a.m. wanted to tell you thanks for trying. Know ur probably jst getting ur feet wet in this but stick to ur gut and ur integrity. It’ll take you further than one of these trucks. Thank you again.

Van. (RX-3, p. 1).

On the morning of October 27, 2011, when Sales reported to work, he learned that Complainant had not taken the load to St. Louis, Missouri. By that time, Sales realized there was not time for Complainant to deliver the load by 10:00 a.m. Complainant refused to take the load, and asked to speak with Sales’ manager. Complainant was transferred to Dave Peak. Complainant spoke with Peak and advised him he was refusing to take the load. Peak stated that was grounds for termination, and requested that Complainant take the truck to

Respondent's Madison, Illinois terminal, which was in the St. Louis vicinity. Complainant stated he would take the truck to the North Little Rock, Arkansas terminal.

13. Complainant remained in off-duty status until approximately 10:57 a.m. on October 27, 2011, when he drove the truck to Respondent's terminal in North Little Rock. He arrived at the terminal around 1:24 p.m. and turned the truck in. Complainant's employment was terminated at that time.
14. Complainant had been technically off duty for more than 34 consecutive hours when he went on duty at 1:52 a.m. on October 24, 2011. (RX-4, pp. 22-24). On October 24, 2011, Complainant was on duty not driving for 1 hour and 13 minutes, and was on duty driving for 9 hours and 10 minutes. He was in the sleeper berth for 10 hours and 1 minute. (RX-4, p. 24). On October 25, 2011, Complainant was on duty not driving for 4 hours and 16 minutes, and was on duty driving for 8 hours and 41 minutes. He was in the sleeper berth for 7 hours and 46 minutes. (RX-4, p. 25). On October 26, 2011, Complainant was in the sleeper berth for 4 hours and 30 minutes, and went on duty at 4:30 a.m. He began driving at 4:56 a.m. He was on duty not driving for a total of 4 hours and 22 minutes that day, and was on duty driving for 7 hours and 17 minutes. He logged off duty at 4:26 p.m., and was off duty until 10:57 a.m. on October 27, 2011. (RX-4, pp. 26-27).
15. I specifically find that at no time on October 26 or 27, 2011, were hours of service or fatigue discussed. I find Sales and Peck to credible witnesses.

DISPUTED ISSUES

Up until the time Complainant was told that the other driver would not be able to meet him, the facts are not in dispute. At that point, however, the testimony differs. Respondent alleges Complainant told Sales that he would not deliver the load because he had other plans, and "would do the same thing" as the other driver and "bring my truck to the yard." Complainant, however, alleges that he refused to take the load to St. Louis because he was not going to be safe on the road, and that he had been awake for 19.5 hours, and was required to take a 10 hour break. Complainant further argues that when he logged off duty upon arriving at the Marion, Arkansas exit around 4:30 p.m. on October 26, 2011, he was not really off duty. Complainant states he logged in as off duty because he expected to go home. However, his plans changed when he began conversing with Respondent by phone and realized the other driver could not meet him. Complainant avers this left him in a state of waiting, still responsible for his load, and thus on duty. If Complainant had technically been on duty since arriving in Marion, Arkansas, then he would have needed to take a 10 hour break prior to driving to St. Louis, and would not have been able to complete the load by 10:00 a.m. on October 27, 2011.

LEGAL AUTHORITIES

A. Statutory and Caselaw

The employee protection provisions of the STAA provide, in pertinent part:

(a) Prohibitions. (1) A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because --

(A)

(i) the employee, or another person at the employee's request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety regulation, standard, or order, or has testified or will testify in such a proceeding; or

(ii) the person perceives that the employee has filed or is about to file a complaint or has begun or is about to begin a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order;

(B) the employee refuses to operate a vehicle because –

(i) the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security; or

(ii) the employee has a *reasonable apprehension* of serious injury to the employee or the public because of the vehicle's hazardous safety or security condition.

49 U.S.C. § 31105(a)(emphasis added).

Thus, a refusal to drive is protected under two STAA provisions. The first provision, 49 U.S.C. § 31105(a)(1)(B)(i), requires that Complainant show he refused “to operate a vehicle because—the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security.” The second refusal to drive provision, 49 U.S.C. § 31105(a)(1)(B)(ii), focuses on whether a reasonable person in the same situation would conclude that there was a reasonable apprehension of serious injury “to the employee or the public because of the vehicle's hazardous safety or security condition.”

The STAA defines reasonable apprehension as:

[A]n employee's apprehension of serious injury is reasonable only if a reasonable individual in the circumstances then confronting the employee would conclude that the hazardous safety or security condition establishes a real danger of accident, injury, or serious impairment to health. To qualify for protection, the employee must have sought from the employer, and been unable to obtain, correction of the hazardous safety or security condition.

49 U.S.C. § 31105(a)(2)(emphasis added).

In 2007, Congress amended the STAA's burden of proof standard as part of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, 121 Stat. 266 (9/11 Commission Act). Under the amendment, STAA whistleblower complaints are governed by the legal burdens set out in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121(b)(AIR 21). Under the AIR 21 standard, complainants must show by a "preponderance of evidence" that a protected activity is a "contributing factor" to the adverse action described in the complaint. 49 U.S.C. § 42121(b)(2)(B)(i); *see also* 75 Fed. Reg. 53545, 53550. The employer can overcome that showing only if it demonstrates "by clear and convincing evidence that it would have taken the same adverse action in the absence of the protected conduct." 75 Fed. Reg. 53545, 53550; 49 U.S.C. § 42121(b)(2)(B)(i).

Under the 2007 amendments to the STAA, to prevail on his STAA claim, the complainant must prove by a preponderance of the evidence that 1) he engaged in protected activity; 2) that the respondent took an adverse employment action against him; and 3) that his protected activity was a contributing factor in the unfavorable personnel action. *Clarke v. Navajo Express, Inc.*, Case No. 2009-STA-18, @ 4 (ARB June 29, 2011) (citing *Williams v. Domino's Pizza*, Case No. 2008-STA-52, @ 5 (ARB Jan. 31, 2011)).

DISCUSSION

A. Adverse Action

The STAA states that an employer may not "discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment." 49 U.S.C. § 31105(a)(1). Termination or discharge from employment is not required; rather demonstration of an adverse action by the employer is sufficient.

Here, Complainant's position was terminated, thus I find that an adverse action occurred. However, Complainant must still show by a preponderance of the evidence that he engaged in some type of protected activity, and that the protected activity was a contributing factor to his termination, which is discussed in detail below.

B. Protected Activity

Complainant alleges that he engaged in protected activity "when he refused to operate his assigned truck-tractor on October 26, 2011 because actual violations of 49 C.F.R. §§ 392.3 and 395.3 would have resulted but for [Complainant]'s refusal to drive." Complainant further alleges that his "refusal to drive was based upon a reasonable apprehension of serious injury." (Complainant's Brief, at 4).

49 C.F.R. §395.3 establishes maximum driving time for property-carrying vehicles, effective December 27, 2007 to February 26, 2012, in pertinent part:

(a) [N]o motor carrier shall permit or require any driver used by it to drive a property-carrying commercial motor vehicle, nor shall any such driver drive a property-carrying commercial motor vehicle:

(1) More than 11 cumulative hours following 10 consecutive hours off-duty;

(2) For any period after the end of the 14th hour after coming on duty following 10 consecutive hours off duty, except when property-carrying driver complies with the provision of §395.1(o) or §395.1(e)(2).

49 C.F.R. §395.3(a).

A refusal to operate a motor vehicle in violation of 49 C.F.R. §395.3 is protected under 49 U.S.C. §31105(a)(1)(B)(i). *See, e.g. Shields v. James E. Owen Trucking, Inc.*, ARB No. 08-072, ALJ No. 2007 STA-22, at 9 (ARB Nov. 30, 2009); *see also Trans Fleet Enterprises, Inc., v. Boone*, 987 F.2d 1000, 1004 (4th Cir. 1992).

Additionally, Complainant alleges but for his refusal to drive, violations of 49 C.F.R. §392.3, ill or fatigued operator, would have occurred. The regulation states:

No driver shall operate a commercial motor vehicle, and a motor carrier shall not require or permit a driver to operator a commercial motor vehicle, while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle.

In *Stauffer v. Wal-Mart Stores, Inc.*, ARB No. 99-107, 1999-STA-21 (ARB Nov. 30, 1999), the Court recognized that a refusal to operate a commercial vehicle in violation of 49 C.F.R. §392.3 is protected under 49 U.S.C. § 31105(a)(b)(i).

In order for Complainant's refusal to drive to be protected activity, the refusal must be because operation of the vehicle would violate "a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security", or because Complainant had "a reasonable apprehension of serious injury to the employee or the public because of the vehicle's hazardous safety or security condition." 49 U.S.C. § 31105(a). Complainant testified that he refused to take the load and told Sales "I don't have the hours, I have other plans, however, I do not have the hours." He stated that he told Sales he would not be safe on the road. (Tr. 79). However, Sales testified that during the course of his phone conversation with Complainant, beginning at 9:34 p.m. on October 26, 2011, Complainant never mentioned anything about not having enough hours to deliver the load; he never stated he was too fatigued or too tired to drive. (Tr. 115). Additionally, Complainant sent a message to Sales on the Qualcomm system at 10:33 p.m. that same night, which also did not mention lacking hours to complete the run. (RX-3). Complainant spoke with Peak on the morning of October 27, 2011, and Peak testified that Complainant did not mention to him not having hours or being too

fatigued to drive. Furthermore, Peak had checked Complainant's log and determined he had sufficient hours of service to deliver to St. Louis. (Tr. 122-23). I find that despite Complainant's testimony, the testimony of Sales, Peak, and the message sent to Sales by Complainant via the Qualcomm system prove that Complainant did not mention a safety concern over a lack of hours. I further find that Complainant's refusal to drive was not because he was in fear, or had a reasonable apprehension of fear, of an hours violation, but because he had other plans, a family reunion, that he wanted to participate in.

Complainant had asked and Sales had attempted to arrange time off for Complainant to attend a family reunion in the Memphis area. Sales had arranged for another driver to meet Complainant in Marion, Arkansas on October 26, 2011, and take the load to St. Louis, Missouri. Complainant made arrangements to pick up family members at the airport. When Complainant arrived in Marion, Arkansas and began checking on the status of the other driver, he was left waiting, and at 9:34 p.m. was notified that the other driver would not come. Most convincing that Complainant's refusal to take the load was because of his arranged time off and not due to a lack of hours is the message he sent to Sales via the Qualcomm system, an hour after Sales told him to continue to St. Louis, Missouri with the load. Complainant wrote that he "wanted to say thanx for staying up and working on this," which inferences Sales' failed attempt at getting another driver to meet Complainant and deliver the load. He further stated "You did ur job more so than most and you shld be commended however I know whats coming down tomorrow morning but let me tell you a load of lumber is not worth losing ur integrity over." (RX-3, p. 1). It seems very unlikely that Complainant would make this statement if he had told Sales he lacked hours or was fatigued and Sales had ordered his to deliver the load regardless. Thus, I find that Complainant's refusal to take the load was due to his planned vacation and his inability to complete those plans, had he taken the load. As unfortunate as the situation was, it is not protected activity under the STAA to refuse to take a load due to an anticipated, yet retracted vacation.¹

I find that Complainant could have taken the load to St. Louis, Missouri without violating the driving requirements of §§395.3 and 392.3. Complainant officially went on duty at 4:30 a.m. on October 26, 2011. Under 49 C.F.R. §395.3, a driver may not drive after the end of the 14th hour coming on duty following 10 hours off duty, unless a 10 hour break is taken. Thus, Complainant avers that he would not be able to drive past 6:30 p.m. on October 26, 2011, unless he first had a break of 10 consecutive hours off duty. However, Complainant logged off duty at 4:26 p.m. on October 26, 2011. If his ten hour break had commenced, he could have driven up to 11 hours beginning at 2:26 a.m. on October 27, 2011. Respondent argues that Complainant's break did commence at 4:26 p.m., and thus he could have begun driving at 2:26 a.m. and made the load to St. Louis, Missouri by 10:00 a.m. on October 27, 2011.² Complainant avers, however, that he was not really off duty when he logged off duty at 4:26 p.m., thus his ten hour

¹ Complainant also argued he engaged in protected activity by refusing to drive because doing so would have violated §392.3. Section 392.3 describes ill or fatigued conditions when a driver shall not operate a vehicle and a motor carrier shall not require or a permit a driver to operate under such conditions. For the same reasons I found he did not engage in protected activity for refusing to drive under Section 395.3, I find that he did not engage in protected activity for refusing to drive under Section 392.3. Refusing to drive due to his fatigued condition could have been protected activity, yet I find that is not why he refused to drive on the date in question.

² Complainant testified he could have made the drive from Marion, Arkansas to St. Louis, Missouri in five to five and a half hours, without stops. (Tr. 81)

break did not commence, and he could not have made the load by 10:00 a.m. the following morning.

In support of this, Complainant offers testimony from Sales, acknowledging that Complainant was still responsible for the load while in Marion, Arkansas. Additionally, Complainant offers §395.2, which defines on duty time as “all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work.” The regulation then lists specific instances of on duty time, such as “all time . . . remaining in readiness to operate the commercial motor vehicle,” “all time at a plant, terminal, facility, or other property of a motor carrier or shipper, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier,” and “[p]erforming any other work in the capacity, employ, or service of a motor carrier.” 49 C.F.R. §395.2.³ Complainant states that he logged off duty because he had expectations of being relieved shortly by another driver, but over the next several hours, through various phone calls, was awaiting further instructions and still responsible for the load.

Respondent argues, to the contrary, that Complainant’s 10 hour break commenced at 4:26 p.m. when he logged off duty. Complainant was familiar with Respondent’s logging system, and had logged off duty in the same location, “5 mi NNW of West Memphis, AR” on many previous occasions. Additionally, employees are trained in how to use the logging system, and how to correct mistakes made when logging off duty; he could have changed his status. Even though Complainant argues he was not relieved of responsibility for the load, he was free to leave the truck as he pleased, which is customary during a resting period. Complainant would have been free to go to his house, as long as it was fairly close. (Tr. 38). Thus, Complainant’s argument that he was on duty because he was awaiting further instructions is without merit. He was free to take his break in any way he chose, even if he was required to return and begin driving again at 2:26 a.m. if the other driver did not show. Claimant admitted his responsibility for the load that day in the Marion lot was no different than at any other location where he stopped for a 10 hour rest break. I find Complainant was not “remaining in readiness to operate the commercial motor vehicle” as contemplated by §395.2. He could legally drive up to 11 hours after his 10 hour break, which began at 4:26 p.m. on October 26, 2011. Accordingly, I find no anticipated violation of driving hour requirements.

³ Complainant also cites 62 Fed. Reg. 16422 and the Department of Transportation interpretive guidelines as evidence that even though he was technically logged as off duty, he was not relieved of responsibility and therefore not off duty.

SUMMARY

Because I did not find that Complainant engaged in protected activity, his alleged refusal to drive for fear of violating Sections 395.3 and 392.3 could not have been a contributing factor in the decision to terminate him. He has failed to prove by a preponderance of the evidence that he engaged in whistleblowing or protected activities under the STAA, and that Respondent terminated him due to those protected activities. Accordingly, Complainant's claim for relief under the STAA is hereby **DENIED**.

So ORDERED.

LARRY W. PRICE
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. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 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).

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(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).