U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 31 August 2006

CASE NO.: 2006-SOX-00076

In the Matter of:

JAMES R. SHELTON,
Complainant,

vs.

TIME WARNER CABLE,
Respondent.

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

INTRODUCTION

This case arises out of a complaint of discrimination filed by the Complainant, James R. Shelton, on October 28, 2005, against the Respondent, Time Warner Cable, Inc., pursuant to the employee protection provisions of Public Law 107-204, Section 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 *et seq*. ("Sarbanes-Oxley Act" or "SOX") enacted on July 30, 2002. This proceeding was initiated before the Office of Administrative Law Judges ("OALJ") on April 18, 2006, when the Complainant filed objections to the Administrator's dismissal of his complaint. Respondent has filed a motion asking that this case be dismissed.

For the reasons set forth below, the motion to dismiss is GRANTED, and this case is DISMISSED WITH PREJUDICE.

ANALYSIS AND FINDINGS

Procedural Background

On October 28, 2005, the Complainant wrote a letter to Secretary of Labor Elaine Chao, asking about the status of a complaint that he said he sent her on January 31, 2005, concerning his rights under the Sarbanes-Oxley Act. This October 28, 2005, letter was treated as a whistleblower complaint under SOX and referred to the Occupational Safety and Health Administration ("OSHA"), where it was assigned to an investigator, Joshua Paul. Mr. Paul concluded that the complaint was untimely under Sarbanes-Oxley, and the OSHA Regional Administrator ("Regional Administrator") dismissed the complaint on March 31, 2006, after

finding that the October 28, 2005, letter and the Complainant's various other letters to OSHA[1] did not allege that he had engaged in any activity protected by the Sarbanes-Oxley Act and that the complaint was untimely filed.

The Complainant filed a timely request for a hearing before the OALJ, and on April 28, 2006, I issued a Notice of Hearing and Pre-hearing Schedule setting this for hearing on June 29, 2006, in San Diego, California. I vacated the hearing date at the Complainant's request after learning of problems with the service of the original hearing notice on the Respondent. I conducted a telephone conference call on June 16, 2006, with the Complainant and Respondent's counsel. During the conference call, it was agreed that the hearing would be re-scheduled to August 25, 2006, and that the hearing location would be changed to the Department of Labor courtroom in Long Beach, California. During the conference call, I also set a schedule for handling a motion to dismiss the Respondent's counsel said he was going to file.

On June 30, 2006, the Respondent filed a Motion to Dismiss Complaint presenting three bases for its motion. The Complainant filed a Response in Opposition to Respondent's Motion to Dismiss Complaint ("Complainant's Response") opposing the motion on July 11, 2006. On July 14, 2006, Respondent filed a request asking for leave to file a reply to the Complainant's Response and included a copy of the reply, entitled "Time Warner Cable's Reply to Complainant's Response in Opposition to Time Warner Cable's Motion to Dismiss Complaint" ("Respondent's Reply.") The Complainant opposed this request on July 17, 2006, arguing that it was untimely and asked for an opportunity to respond to the Respondent's Reply if I decided to consider it. Respondent responded by pointing out that I have discretion to allow a party to reply to a response to a motion.

Since Respondent was the moving party in this particular exchange of documents, I find it appropriate to allow it an opportunity to respond to the Complainant's opposition to the Motion to Dismiss and will consider Respondent's Reply to the Complainant's Response. However, I will not allow a further response by the Complainant.

On July 25, 2006, I issued an order vacating the scheduled hearing and ordering the Complainant to submit copies of the January 29, 2005, complaint to the Department of Labor and his January 31, 2005, letter to Secretary Chao that had been referred to by Department of Labor investigator and Regional Administrator. On July 31, 2006, the Complainant provided me with a re-printed copy of his January 31, 2005, letter to Secretary Chao. He explained that he had not kept a copy of the January 31, 2005, letter but represented to me that the copy he re-printed was an accurate copy of the letter he sent on that day to Secretary Chao. On August 3, 2006, pursuant to a Freedom of Information Act ("FOIA") request the Complainant submitted to OSHA, OSHA sent directly to me a copy of the Complainant's January 29, 2006, letter, along with a copy of his attachments and a copy of the memorandum referring his complaint for investigation. I provided copies of these documents to the parties. Then, on August 10, 2006, the Complainant submitted a copy of the January 29, 2005, complaint that he had received directly from OSHA pursuant to his FOIA request.

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[1] The Regional Administrator's determination referred to letters written by the Complainant dated January 29, January 31, February 19, and March 9, 2005.

Respondent's Motion to Dismiss

Respondent presents three grounds for its motion to dismiss. First, it argues that the Complainant's complaint was untimely because he was terminated on December 17, 2004, and did not file his complaint until October 28, 2005. Second, it argues that the Complainant's October 28, 2005, complaint and his prior letters do not establish a cause of action under the Sarbanes-Oxley Act, and, finally, it argues that it is not a "company" under the Sarbanes-Oxley Act.

Applicable Law

Respondent's motion is essentially a motion for summary decision under the OALJ's rule at 29 C.F.R. § 18.40. Under that rule and the Federal Rules of Civil Procedure, an ALJ may enter summary judgment for a party if the pleadings, affidavits, material obtained by discovery, or other materials show that there is no genuine issue of material fact. 29 C.F.R. § 18.40 Federal Rule of Civil Procedure Rule 56(c). An issue is genuine if sufficient evidence exists on each side so that a rational trier of fact could resolve the issue either way, or an issue of fact is material if under the substantive law, it is essential to the proper disposition of the claim. *Alder v. Wal-Mart Stores, Inc*., 144 F.3d 664, 670 (10th Cir. 1998). The mere existence of some factual dispute will not defeat an otherwise properly supported motion for summary judgment because the factual dispute must be material. *Schwartz v. Brotherhood of Maintenance Way Employees*, 264 F.3d 1181, 1183 (10th Cir. 2001).

The usual and primary purpose of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses. *Celotex Corp. v. Catrett*, 477, U. S. 317, 323-34 (1986). The party moving for summary judgment has the burden of establishing the absence of evidence to support the nonmoving party's case. *Celotex Corp*., supra. at 587. If the moving party properly supports its motion, the burden shifts to the non-moving party, who may not rest upon the mere allegation or denials of his or her pleading, but must set forth specific facts showing that there is a genuine issue for trial. *Muck v. United States*, 3 F.3d 1378, 1380 (10th Cir. 1993). In setting forth these specific facts, the non-moving party must identify the facts by reference to affidavits, deposition transcripts, or specific exhibits. *Alder*, 144 F.3d at 671. The non-moving party cannot rest on ignorance of facts, on speculation, or on suspicion and may not escape summary judgment in the mere hope that something will turn up at trial. *Conaway v. Smith*, 853 F.2d 789, 793 (10th Cir. 1988). In reviewing a request for summary judgment, I must view all of the evidence in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby*, 477 U.S. 262 (1986). 477 U.S. 262 (1986).

The Sarbanes-Oxley Act prohibits discriminatory actions by publicly traded companies against an employee who provides, causes to be provided, or otherwise assists in an investigation concerning any conduct which the employee reasonably believes constitutes violations of certain provisions of the Sarbanes-Oxley Act, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. 18 U.S.C. § 1514A(a)(1); *Klopfenstein v. PCC Flow Techs. Holdings Inc.*, ARB No. 04-149 (May 31, 2006). The Sarbanes-Oxley Act extends such protection to employees of companies with a class of securities registered under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C.

§ 781, or that are required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 780(d). 18 U.S.C. § 1514A(a).

Was the Complaint Timely Filed?

The Sarbanes-Oxley Act requires that a complaint alleging discrimination be filed not later than 90 days after the date on which the alleged violation occurs. 18 U.S.C. § 1514A(b)(2)(D). The applicable regulations at 29 C.F.R. § 1980.103(d) provide:

> Within 90 days after an alleged violation of the Act occurs (*i.e.*, when the discriminatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been discriminated against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination. The date of the postmark, facsimile transmittal, or e-mail communications will be considered to be the date of filing….

There is no dispute as to the facts necessary to resolve this issue. The Complainant was terminated on December 17, 2004. Under Sarbanes-Oxley, his complaint had to be filed on or before March 17, 2005.[2] The Complainant wrote letters to the Department of Labor on January 29 and 31, 2005, as well as on October 28, 2005.[3] OSHA only treated his October 28, 2005, correspondence as a complaint under SOX.

In his response to Respondent's motion, the Complainant asserts that he filed a timely complaint. He states that his complaint was sent to the Solicitor of the Department of Labor and to Secretary Chao in January 2005, and notes that his letter was acknowledged by the Department of Labor before the filing deadline. He attached a copy of that acknowledgement to his response as Exhibit 12.

The Complainant wrote two letters in January 2005. His January 29, 2005, letter, which was received by OSHA on February 11, 2005, was addressed to "Mr. Snare,"[4] who was the Acting Assistant Secretary of Labor at the time. The Complainant stated in his January 29, 2005, letter that he had been terminated for insubordination but that he believed the real reason was because he "inquired about certain ERISA issues dealing with benefits, and because of the Webber incident." He explained that the "Webber incident" involved threats allegedly made by the Complainant's supervisor, John Webber, in Respondent's Torrance production office and the Respondent's handling of the Complainant's complaint about the alleged threat. This letter did

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[2] Respondent states the complaint had to be filed on or before March 18, 2005. The 90th day actually falls on March 17, 2005.

[3] Both the OSHA investigator and the Regional Administrator mistakenly referred to the Claimant as having filed his SOX complaint on October 15, 2005. The reference to October 15, 2005, appears to be a typographical error because it is clear from the record that the correct date is October 28, 2005. The copy of the "original complaint" forwarded to the OALJ by the Deputy Regional Administrator was a letter dated October 28, 2005, that the Complainant sent to Secretary Chao asking about a January 31, 2005, letter he said he sent to Secretary Chao inquiring about his rights under SOX.

[4] The set of documents sent directly to me by OSHA pursuant to the Complainant's FOIA request included a transmittal memo from Frank Strasheim, Regional Administrator Region IX, to Richard Fairfax, Director, Directorate of Enforcement Programs, which referred to "Mr. Snare" as Acting Assistant Secretary Snare.

not mention the Sarbanes-Oxley Act nor did it include any acts or omissions by the Respondent which the Complainant alleged he believed were SOX violations.

Attached to this January 29, 2005, letter were various e-mails relating to what the Complainant believed was an unsafe working condition as a result of the "Webber incident," and various other e-mails about his employment status. At page 24 of the attachments was an e-mail message the Complainant sent after his termination in which he mentioned that he would be contacting the Department of Labor about whether the Sarbanes-Oxley Act applied to him, but he offered no details or information about why he believed the Sarbanes-Oxley Act might apply to his situation.

While OSHA did send the Complainant a letter on February 28, 2005, acknowledging receipt of his January 29, 2005, complaint, it acknowledged it as a complaint of reprisal under §11(c) of the OSHA Act, not SOX. OSHA referred to his letter as a "possible" whistleblower claim under Section 11(c) of the Occupational Safety and Health Act of 1970 ("OSHA Act"). (Complainant's Response, Exhibit 12.) The Administrator's determination similarly referred to that letter as a complaint under Section 11(c) of the OSHA Act.

In his opposition to Respondent's Motion to Dismiss, the Complainant acknowledges that the letter acknowledging his January 29, 2005, complaint refers only to Section 11(c) of the OSHA Act, but he states that OSHA focused "more on the violence issue rather than the more complicated Sarbanes-Oxley issue and that is why it determined the Section 11c status at that time." His statement implies that he raised the Sarbanes-Oxley issue in his January 29, 2005, letter and that OSHA chose not to address it. That is not true. The January 29, 2005, letter refers only to the possibility of retaliation for raising ERISA issues and for expressing concerns about workplace safety. There is no reference to SOX or any SOX-related activity.

After reviewing the Complainant's January 29, 2005, letter, along with its attachments, I do not find that letter to be a complaint of reprisal for protected activity under SOX. SOX was only mentioned on page 24 of the attachments to that letter. A single reference to an intent to inquire into the possible applicability of SOX that is part of a very long e-mail relating to other complaints is not sufficient to be treated as a whistleblower complaint alleging reprisal under SOX for protected activities, especially when the reference was not part of the correspondence directed to the Department of Labor.

Though the Complainant's January 31, 2005, letter to Secretary Chao did not mention retaliation, OSHA also treated it as a complaint of retaliation, but it was handled as a retaliation complaint for activities protected under ERISA, not SOX. (Regional Administrator's March 31, 2006, Determination Letter.)

The Complainant's January 31, 2005, letter to Secretary Chao also was not a complaint of retaliation for protected activity under SOX. That letter referred to a Department of Labor civil action brought against Time Warner Inc. and its subsidiaries for alleged breach of fiduciary duties under the Employment Retirement Income Security Act ("ERISA"). In the letter the Complainant alleged that Time Warner had continued the practices that were the subject of the suit. The Complainant asked Secretary Chao to pursue the matter as part of Secretary Chao's desire to protect the "retirement security of America's workers." Again, this letter included no

reference to the Sarbanes-Oxley Act and did not provide any information about alleged violations of SOX. This letter discussed ERISA issues exclusively. Thus, I do not find the Complainant's January 31, 2006, letter to be a SOX complaint.

The Complainant also argues that included with both his January complaints was a copy of his December 8, 2004, e-mail entitled "Employee Treatment," which "touches" on Respondent's "use of volunteers, intentional misclassification of employees as independent contractors, intentional breaks in service to deny benefits, management intentionally not reviewing employees [sic] performance, non compliance with franchise agreements and breach of fiduciary duty under ERISA." He asserts that he "reasonably believed" that through these practices, Respondent masked operating costs to "artificially inflate its revenues, shore up its bottom line, and intentionally misstate or misrepresent its financial condition to defraud shareholders and investors." (Complainant's Response.) The Complainant did mention these issues in his e-mail messages, but after reading the entire e-mail message and reviewing the other e-mail messages included with that attachment that the Complainant exchanged with other employees of the Respondent, I am not persuaded that these complaints were made because of a belief that Respondent was trying to defraud its shareholders and investors.

It is clear from the e-mail message that the Complainant's concern in December 2004 was not shareholder fraud. The Complainant's statements about "volunteering" in the December 8, 2004, e-mail message were that under the FLSA, a person can't "volunteer." He said that he would be looking into back pay for himself and that he was going to contact other "volunteers" about enlisting them to pursue a back pay claim with the Department of Labor. The majority of the e-mail messages relate to his disagreement with how Respondent handled his complaint about the "Webber incident," and his dissatisfaction with his employment status and relationship with the Respondent, specifically about the compensation that he felt he was entitled to from the Respondent. His primary concerns were over his personal safety, his entitlement to wages during times when he was deemed a "volunteer," and the effect his employment status and employment dates had on his entitlement to employee benefits.

A complaint under SOX must contain a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violations. *See Aurich v. Consolidated Edison Co. of New York, Inc.* 86-CAA-2 (Sec'y Apr. 23, 1987) (the substance of the complaint determines whether the activity is protected under the particular statute at issue) and *Wilkinson v. Texas Utilities*, 92-ERA-16 (Sec'y July 13, 1993) (when the Complainant did not raise any safety issues concerning the respondent's operation of a nuclear power plant, but rather insisted that the employer had discriminated against her on the basis of her sex, the Complainant failed to state a violation of the ERA's employee protection provision).

The Complainant's January 29, 2005, letter alleged that he was terminated because of inquiries he made about ERISA issues and about workplace safety. As the Complainant pointed out, OSHA focused on the safety issue and OSHA elected to process that letter as a retaliation claim under the OSHA Act. However, contrary to the Complainant's claim, OSHA did not ignore a possible SOX retaliation complaint because there was no SOX complaint in his letter. OSHA apparently overlooked his claim of retaliation under ERISA, but that was remedied when his January 31, 2005, letter, which only referred to ERISA, was treated as a claim of retaliation

under ERISA. Neither of the Complainant's January letters provided the information necessary to establish a SOX complaint. They did not even mention SOX.

There is no evidence that the Complainant mentioned the Sarbanes-Oxley Act in any letter to the Department of Labor before October 28, 2005, when he claimed that he wrote Secretary Chao on January 31, 2005, about his "protected rights" under Sarbanes-Oxley.

I find, therefore, that the Complainant did not file a complaint alleging reprisal for protected activity under the Sarbanes-Oxley Act until October 28, 2005, and the Motion to Dismiss the Complaint as untimely filed is GRANTED.

Did the Complainant Fail to State A Claim Under Sarbanes-Oxley?

There is no factual dispute as to the allegations the Complainant made in his various letters to the Department of Labor. Respondent argues that the Complainant's October 28, 2005, letter and his letters to other agencies all failed to allege facts that set forth a *prima facie* Sarbanes-Oxley violation. In response, the Complainant argues that no particular complaint form is required to file a SOX complaint and that both of his January 2005, letters included hard copies of the December 8, 2004, e-mail he sent entitled "Employee Treatment." He claims the December 8, 2004, e-mail identifies the Sarbanes-Oxley violation. He states that he first raised his concerns about the use of volunteers, intentional misclassification of employees as independent contractors, intentional breaks in service to deny benefits, management's failure to review employee performance, non-compliance with franchise agreements and breach of fiduciary duty under ERISA in the December 8, 2004, e-mail message. The Complainant asserts that he believed that through these practices, Respondent was "masking operating costs to artificially inflate its revenue, shore up its bottom line, and intentionally misstate or misrepresent its financial condition to defraud shareholders and investors."

The Complainant is correct that no particular complaint form is required to file SOX complaint and that the only requirement is that the complaint be in writing. If, in fact, either of the Complainant's January letters included the required information alleging a violation of SOX in January 2005, his complaint would be timely. As mentioned before, while no form is required to file a complaint, the written complaint must contain a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violations. *Aurich v. Consolidated Edison Co. of New York, Inc.*, 86-CAA-2 (Sec'y Apr. 23, 1987).

The December 8, 2004, e-mail, Exhibit 1 of Kristy Hennessy's Declaration, was a very lengthy message the Complainant sent to John Billock, with copies to 14 other individuals. In this letter, the Complainant essentially listed his numerous complaints against the Respondent for not being paid when he was associated with the Respondent as a volunteer, his unsuccessful application for a vacancy, his periodic lay-offs, Respondent's failure to clearly communicate with him about his employment status, Respondent's failure to find merit in a complaint he filed against his supervisor, Mr. Webber, and Respondent's alleged ERISA violations.

There was no reference in the e-mail to Sarbanes-Oxley or any allegation of violations of the Sarbanes-Oxley Act, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. There is also no assertion or

implication that the Complainant felt any of these actions he was complaining about were intended to deceive shareholders or investors. Instead, as Respondent pointed out in the Respondent's Reply, they were allegations of possible violations of the Fair Labor Standards Act and ERISA. Though he claims that he believed that Respondent engaged in these practices to defraud the shareholders, the Complainant did not mention this concern or even infer it in any of the e-mails he sent to Respondent or in either of his January 2005 letters to the Department of Labor. He did not mention them in his October 28, 2005, letter to Secretary Chao. In his October 28, 2005, letter to Secretary Chao, the Complainant claimed Respondent had filed false forms with the IRS and SEC, but he offered no details.

Section 1514A of the Sarbanes-Oxley Act provides that a protected activity includes only those reports of violations of "section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange commission, or any provision of Federal law relating to fraud against shareholders…." 18 U.S.C. § 1514A(a)(1). While the Complainant's allegations may relate to violations of the Fair Labor Standards Act or ERISA, they do not allege violations under the Sarbanes-Oxley Act.

I am not persuaded by the Complainant's more recent claim in his opposition to the Motion to Dismiss that he challenged the Respondent's actions because of his concern over possible shareholder fraud. It is very apparent from the numerous e-mails attached to his January letters to the Department of Labor that he was very deeply concerned about workplace safety as a result of his perceived threat by Mr. Webber and his employment relationship with the Respondent which he felt had violated provisions of the FLSA and ERISA. SOX was not part of these concerns

Accordingly, I find the Complainant failed to allege facts that set forth a *prima facie* case of retaliation for protected activity under the Sarbanes-Oxley Act, and the Motion to Dismiss for failure to state a claim is GRANTED.

Is the Respondent Covered by the Sarbanes –Oxley Act?

The employee protection provision of the Sarbanes-Oxley Act generally prohibits covered employers and individuals from retaliating against employees for providing information or assisting in investigations related to violations of laws listed in the Sarbanes-Oxley Act and SEC rules. A "company" is defined in the Department of Labor's implementing regulations as "any company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781) and any company required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d))."

Respondent alleges that it is not a "company" covered by the Sarbanes-Oxley Act because it has no securities registered under Section 12 of the Securities Exchange Act of 1934 and does not file reports under Section 15(d) of the Securities Exchange Act of 1934. In response, the Complainant asserts that the Respondent is covered through Time Warner Inc. because Respondent's employees are eligible for stock options of Time Warner, Inc., the parent company, and Time Warner Inc. oversees the Time Warner Cable Pension Plan. However, Time-Warner Cable is a non-publicly traded subsidiary of Time-Warner, Inc., which does file reports under Section 15(d). (Declaration of Gregory S. Drake.)

The Administrative Review Board has stated that "[w]hether a particular subsidiary or its employee is an agent of a public parent for purposes of the SOX employee protection provision should be determined according to the principles of the general common law of agency." *Kloppenstein v. PCC Flow Technologies Holdings, Inc.*, ARB No. 04-149, ALJ No. 04-SOX-11, slip op. at 14 (ARB May 31, 2006). Thus, there are factual findings and determinations that must be made about the relationship between the Time Warner Cable and Time Warner Inc. before this issue can be resolved. With the factual determinations that must be made, this issue is not appropriate for summary judgment.

Thus, the Motion to Dismiss on this basis is DENIED.

CONCLUSION

The Respondent's Motion to Dismiss this complaint as untimely filed and for failure to state a claim under the Sarbanes-Oxley Act is GRANTED. The Motion to Dismiss this complaint on the grounds that Respondent is not covered by the Sarbanes-Oxley Act is DENIED.

ORDER

It is hereby ORDERED that this case be DISMISSED WITH PREJUDICE.

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JENNIFER GEE
Administrative Law Judge

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 the administrative law judge's decision. *See* 29 C.F.R. § 1980.110(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. 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. § 1980.110(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(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. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

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(c). Even if you do file a Petition, 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 after the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).