U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 05 December 2006

CASE NO.: 2006 SOX 132

In the Matter of

MANNES NEUER
Complainant

v.

STEVEN BESSELLIEU,
President, Sapiens Americas

and

RONI ALDOR,
CEO, Sapiens International
Respondents

Appearances: Mr. Gustav Goldberger, Attorney
For the Complainant

Mr. Gates Garrity-Rokous, Attorney
For the Respondents

Before: Richard T. Stansell-Gamm
Administrative Law Judge

GRANT OF MOTION TO DISMISS & DISMISSAL OF COMPLAINT

Pursuant to a Notice of Hearing dated October 17, 2006, I established a series of motion deadlines and a tentative hearing date in mid-February 2007. Consistent with the order, I received on October 31, 2006 from the Respondents a Motion to Dismiss the Complaint and on November 14, 2006 the Complainant's reply. On November 17, 2006, the Respondents submitted an additional response. In turn, on November 21, 2006, the Complainant provided an additional response.

Procedural Background

On April 7, 2006, through counsel, Mr. Neuer filed a complaint with the Secretary of Labor, through the Regional Administrator, Occupational Safety and Health Administration ("OSHA"), alleging a violation of the employee protection provisions of Section 806 of the

Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (Public Law 107-204), 18 U.S.C. § 1514A ("Act" or "SOX"). In his complaint, Mr. Neuer alleged that Mr. Bessellieu, president of Sapiens America ("SA"), with "tacit" approval from Mr. Aldor, CEO of Sapiens International ("SI"), terminated his employment on January 17, 2006 in retaliation for his disclosures to a business consultant about problems at SA. On August 17, 2006, the Regional Administrator dismissed the complaint because Mr. Neuer had not engaged in protected activity under SOX. Through counsel, on September 11, 2006, Mr. Neuer appealed and the case was forwarded to the Office of Administrative Law Judges for a hearing.

Parties' Positions

Respondents

Mr. Neuer's complaint should be dismissed because it fails to establish on its face that Mr. Neuer engaged in a SOX protected activity and is a "covered" employee under the Act.

Specifically, in making complaints about two employees at SA to an outside consultant, Mr. Neuer did not engage in a protected activity. Notably, absent in his comments was any allegation that the two employees were perpetrating fraud upon the shareholders of SI. Instead, he was concerned that some of SA's product delivery problems were caused in part by one manager who was overworked and another manager who was incompetent and redundant. Although Mr. Neuer asserted in the present litigation that those underperforming employees were also detrimental to SI and its shareholders, the purported performance failure by two employees does not constitute recognizable fraud under SOX. Additionally, the complaint contains no indication that Mr. Neuer actually believed his disclosure involved fraud at SA or SI.

Mr. Neuer is not a "covered" employee under SOX for two reasons. First, his employer, SA, is a privately held company which is not subject to SOX. Under the statute, the SOX whistleblower protection provisions extend only to employees of publicly traded companies. Additionally, the purported "tacit" approval by the CEO of the publicly traded company, SI, does not constitute sufficient control over SA's employment actions to extend SOX coverage to Mr. Neuer as an employee of SA.

Second, no SOX jurisdiction exists over SI because Mr. Neuer is not a U.S. citizen and his comments to the consultant were made in Israel and not the United States.

Complainant

Dismissal of Mr. Neuer's complaint for failure to state a valid claim is inappropriate and against the interest of justice. At this stage of the proceedings all reasonable inferences are drawn in Mr. Neuer's favor since he is the non-moving party.

During his conversation with the business consultant, Mr. Neuer raised concerns about practices and managers at SA that were detrimental to shareholders of SI. He believed Mr. Bessellieu was putting his own interests before the company's profitability by hiring former

colleagues who where incompetent or not qualified. Mr. Neuer thought the shareholders would like to know that SA's marketing director was incompetent. Objectively, Mr. Neuer's conversation included allegations of Mr. Bessellieu's mismanagement which effectively mislead shareholders because he failed to make more appropriate hiring decisions. Additionally, Mr. Bessellieu's employment decisions were unethical, violated the company's code of conduct regarding conflict of interests, and was thus unfair to shareholders. While Mr. Neuer did not present the criminal elements of fraud to the consultant, he nevertheless believed Mr. Bessellieu was acting fraudulently. The reported behavior was illegal and had a material effect on shareholders.

Concerning jurisdiction, SA is an integral part of SI's business organization and its financial statistics are published within SI's requisite financial disclosures. Further, SI conducts extensive business in the United States.

Discussion

Although 29 C.F.R. Part 18, Rules of Practice and Procedure for Administrative Hearings, does not contain a section pertaining to such a motion to dismiss, 29 C.F.R. § 18.1(a) indicates that in situations not addressed in Part 18, the Federal Rules of Civil Procedure are applicable. In turn, FED. R. CIV. P. 12(b)(1) and (6), address motions to dismiss for lack of subject matter jurisdiction and failure to state a claim. While the courts recognize two approaches in considering such motions,[1] at this point in the proceedings I must address whether Mr. Neuer's SOX complaint is sufficient on its face to establish subject matter jurisdiction and state a recognizable claim under SOX. During this evaluation, I must accept the Complainant's factual assertions as true and draw all reasonable inferences from those allegations in his favor.[2]

Jurisdiction

The jurisdiction basis for the Motion to Dismiss rests on two grounds: a) Mr. Neuer's status as an employee of a wholly owned, private subsidiary and b) non-extraterritorial application of SOX to SI, a corporation located in Israel.

Employee Status

At the time of his termination, Mr. Neuer was an employee of SA, which is a privately held subsidiary of SI, a publicly traded corporation.

According to 18 U.S.C. § 1514A(a), no publicly traded company, or a company required to file with the SEC, "or any officer, employee, contractor, subcontractor of such company" may discriminate against an employee for engaging in a SOX protected activity. Absent specific inclusion of the term "subsidiary" in this prohibition, administrative law judges have reached

[1] *See Ohio National Life Insurance Co. v. United States*, 922 F.2d 320 (6th Cir. 1990).

[2] *See Macharia v. U.S.,* 238 F. Supp. 2d 13, 19 (D.D.C. 2002).

varied conclusions on whether the employee of a wholly owned, private subsidiary of a publicly traded parent company is entitled to whistleblower protection.

Relying on the remedial nature of the SOX employee protection provisions and the public interest in corporate integrity, several administrative law judges have determined SOX whistleblower protection extends down to an employee of a private, wholly owned subsidiary of a publicly traded company.[3] However, my respective colleagues' diverse interpretations of this statutory language do not have precedence value; and, to date, no definitive appellate interpretation has been established.

Guided by the caption Congress chose for 18 U.S.C. § 1514A(a) – "WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES," I believe the term "employee" in the employment discrimination prohibition refers to an employee of a publicly traded company. Under my interpretation, absent unique circumstances, employees of privately held subsidiaries are not specifically afforded SOX whistleblower protection. Accordingly, under the plain language of the statute, as an employee of a privately held subsidiary, Mr. Neuer is not a covered employee.

However, under certain conditions, the applicability of SOX whistleblower protection provisions to a publicly traded parent company may reach down to employees of its privately held subsidiaries if the parent company and its wholly owned subsidiary are so intertwined as to represent one entity. In other words, a parent company is not insulated from liability for its subsidiary's actions when the two corporate identities are used interchangeably. *United States v. Bestfoods, et. al*., 524 U.S. 51, 61 (1998) (holding that a parent corporation could be held liable for the actions of its subsidiary where the parent significantly controls the subsidiary); s*ee also Liability of Corporation for Torts of Subsidiary*, 7 A.L.R. 3d 1343. Under those circumstances, liability may be extended in the area where the parent company has exerted its influence or control. *Bestfoods*, 524 U.S. at 59. Consequently, in an employment discrimination case, the parent company may be held liable where it controlled or influenced the work environment of, or termination decision about, an employee of its subsidiary company.

With these latter principles in mind, I find Mr. Neuer's SOX complaint survives a dismissal for facially failing to establish that he is a covered employee under SOX in two ways. First, and most significant, Mr. Neuer specifically alleges in his complaint that the subsidiary president's termination action had the approval of the parent company CEO. Although Mr. Neuer qualified the approval as "tacit," a favorable inference may nevertheless be drawn that the SI CEO had some supervisory authority over the employment actions taken by the SA president.

Second, as part of his initial complaint, Mr. Neuer included the December 9, 2004 work visa application submitted by SA. In describing the "petitioner," and in support of Mr. Neuer

[3]Several administrative law judges have indirectly extended SOX whistleblower protection to employees of private companies by determining that a parent company subject to SOX may be held liable under the Act for violations of the SOX whistleblower provision by its wholly owned subsidiaries. *See Gonzales v. Colonial Bank & The Colonial Bancgroup, Inc*., 2004-SOX-39 (ALJ Aug. 20, 2004); *see also Morefield v. Exelon Services, Inc. and Exelon Corp.*, 2004-SOX-2 (ALJ Jan. 28, 2004); *see also Klopenstein v. PCC Flow Technologies Holdings, Inc. and Allen Parrott*, 2004-SOX-11 (ALJ July 6, 2004).

obtaining a work visa, the application goes into extensive detail about SI's business activities and makes little distinction between SA and SI.

Extraterritorial Application

The Respondent, SI, the publicly traded parent company, also asserts no jurisdiction exists in this case because it is located in Israel and not subject the provisions of SOX. Additionally, SI notes that the purported SOX protected activity actually occurred in Israel and the Complainant is not a U.S. citizen.

As determined by at least one court, SOX whistleblower protection provisions generally do not have extraterritorial reach.[4] However, I believe dismissal of Mr. Neuer's SOX complaint due to territorial concerns at this time is inappropriate due to notable distinctions present in Mr. Neuer's case. First, and most significant, although Mr. Neuer presented his purported SOX concerns to a consultant during a company visit to Israel, he was employed full time in the United States by a wholly owned subsidiary of SI, which was conducting business in the United States. Second, the adverse personnel action, Mr. Neuer's employment termination, occurred in Cary, North Carolina, and not Israel. Third, as discussed above, the visa application presented with Mr. Neuer's SOX complaint certainly raises the prospect of significant intermingling of the business activities of the Israel-based parent company, SI, and its U.S. subsidiary, SA.

Protected Activity

To be obtain relief under the SOX whistleblower protection provisions, Mr. Neuer must prove by a preponderance of the evidence that he engaged in a protected activity which subsequently became a contributing factor in his employment termination.[5] The purported protected activity in this case involves the information Mr. Neuer presented during a December 7, 2005 meeting with Ms. Anat Dvash, a special consultant hired by Mr. Aldor of SI to help him understand the organization of the company and make any necessary changes. According to Mr. Neuer,[6] during his conversation with the consultant he discussed the following topics:[7]

[4]*Carnero v. Boston Scientific Corp.,* 433 F.3d 1 (1st Cir. 2006) (an Argentinean citizen working in Brazil for subsidiaries of a U.S. parent company was not a covered employee under SOX).

[5]Under 18 U.S.C. § 1541A(b)(2)(A), SOX incorporates the procedural provisions and rules of the employee protection provisions of the Aviation Investment and Reform Act for the 21st Century ("AIR 21"), 49 U.S.C. § 42121(b). In turn, 49 U.S.C. § 42121(b)(2)(B)(iii) establishes the requisite elements for relief. *See also* 29 C.F.R.. §§ 1980.102 and 109(a).

[6]As set out in his April 7, 2006 OSHA complaint and November 16, 2006 affidavit. I note a significant procedural issue exists relating to timeliness under the statute of limitations of the additional allegations in Mr. Neuer's November 16, 2006 affidavit. However, I have included two additional topics mentioned in the affidavit that were allegedly also presented in the December 7, 2005 meeting with Ms. Dvash without addressing the timeliness concern for the sake of completeness and since the additional meeting topics do not alter my ultimate determination.

[7]In his motion pleadings, Mr. Neuer also alleges that Mr. Bessellieu's claim of profitability of eMerger compared to insurance verticals was false and self-serving. However, in describing his specific presentation to Ms. Dvash, Mr. Neuer did not include that allegation.

1. In response to Ms. Dvash's inquiry, Mr. Neuer indicated that Sales and Marketing should be segmented along product lines.

2. Also in response to a question by Ms. Dvash, Mr. Neuer stated by the end of 2005, he had concluded that certain aspects of SA's organizational and operational practices required improvement.

3. Mr. Neuer explained that SA's insurance business (development and sales) had been merged with the insurance professional services organization under one manager, Mr. Richard Weidenbeck. Although Mr. Weidenbeck was competent, he was over-tasked, which had the adverse effect of causing SA to experience a significant decline. Mr. Neuer did not believe that Mr. Weidenbeck could reasonably accomplish a job developed for at least two people. As a result, Mr. Weidenbeck was not meeting reasonably expected professional service delivery goals.

4. Mr. Neuer indicated that in his opinion, Mr. Bessellieu's Marketing Director, Ms. Mary Onate, was incompetent. Ms. Onate was in charge of outbound field marketing activities and analyst and channel relations. Ms. Onate clearly lacked the ability to accomplish those duties. She was unfit for the job and occupied a redundant position.

5. Mr. Neuer expressed his belief that SA was performing poorly due to cronyism and redundancies.

6. Mr. Neuer expressed his belief that "Sapiens had gambled too heavily on the insurance space, at the expense of other industry segments and technology-based offerings that continued to generate a majority of its revenue."

According to the Administrative Review Board ("ARB" and "Board"), SOX does not provide whistleblower protection for all employee complaints about a company's financial operations. *Platone v. FLYi, Inc.,* ARB No. 04-154 (Sept. 29, 2006).[8] Instead, to be protected under SOX, "the employee's communications must 'definitively and specifically' relate to any of the listed categories of fraud or securities violations under 18 U.S.C. § 1514A(a)(1)." *Id.* at 17.[9] Thus, under SOX, 18 U.S.C. § 1514A(a)(1), an employee engages in protected activity when he provides information regarding corporate conduct which the employee reasonably believes, subjectively and objectively "constitutes a violation of" at least one of six specific categories of criminal fraud or security violations set out in the Act. Although an employee is not required to identify the specific criminal provision, SEC rule or regulation, or applicable provision of federal law, his protected communication must nevertheless relate to one. The six categories specified by 18 U.S.C. § 1514A(a)(1) in which violation may be reported by an employee are:

[8]In opposition to the Motion to Dismiss, Complainant's counsel cited the underlying administrative law judge determination in *Platone v. FLYi, Inc.,* 2003 SOX 27 (ALJ Apr. 30, 2004) that the employee engaged in protected activity. Upon appeal, the ARB did not adopt the judge's finding and denied the complaint.

[9]As an example, the Board indicated that an employee's communication that the company was materially misstating its financial condition to its investors is a protected under SOX.

1. Title 18, Crimes and Criminal Procedure, Chapter 63, Section 1341, Frauds[10] and Swindles [mail fraud]. This provision establishes that use of the Post Service or private or commercial interstate carrier as a means to intentionally defraud or obtain property by false or fraudulent pretenses is a felony crime punishable by up to five years (or thirty years if the victim is a financial institution) imprisonment.

2. Title 18, Crimes and Criminal Procedure, Chapter 63, Section 1343, Fraud by Wire, Radio, or Television [wire fraud]. This provision establishes that use of wire, radio, or television communication as means to intentionally defraud or obtain property by false or fraudulent pretenses is a felony crime punishable by up to five years (or thirty years if the victim is a financial institution) imprisonment.

3. Title 18, Crimes and Criminal Procedure, Chapter 63, Section 1344, Bank Fraud [bank fraud]. This provision establishes that executing a scheme or artifice to defraud a financial institution is a felony crime punishable by not more than thirty years imprisonment.

4. Title 18, Crimes and Criminal Procedure, Chapter 63, Section 1348, Securities Fraud [securities fraud].[11] This provision establishes that executing a scheme or artifice a) to defraud any person in connection with any security of an issuer of a class of securities registered under Section 12 of the Securities Exchange Act or that is required to file reports under Section 15 (d) of the Securities Exchange Act; or b) to obtain by means of false or fraudulent pretenses any money or property in connection with the purchase of such security identified in a) above is a felony crime punishable by not more than twenty-five years imprisonment.

5. Any rule or regulation of the Securities Exchange Commission.

6. Any provision of federal law relating to fraud against shareholders.

In *Platone,* the ARB also emphasized that the "relevant inquiry" in determining whether an employee engaged in protected activity is not that allegations in the OSHA complaint, but what the employee "actually communicated to [his] employer prior" to the termination action. *Platone,* No. 04-154 at 17. Although securities fraud and fraud against shareholders are not further defined in the Act, the Board also noted that elements of a cause of action for securities fraud "are rooted in common-law tort actions for deceit and misrepresentation." *Id.* at 15. Those elements include a material misrepresentation, scienter, and causal connection between the misrepresentation and harm.[12] *Id.*

With these principles in mind, and considering all inferences favorable to Mr. Neuer, I nevertheless conclude that he did not engage in a protected activity during his discussion with

[10]Fraud is defined as "false representation of a matter of fact. . .which is intended to deceive another so that he will act upon it to his legal injury." BLACK'S LAW DICTIONARY 788 (4th ed. 1968).

[11]This criminal provision was added by Section 807 of the Sarbanes-Oxley Act (2002).

[12]In *Platone,* the ARB concluded the employee's communications were not protected under SOX because the concerns did "not even approximate any of the basic elements of a claim of security fraud." *Platone,* No. 04-154 at 22.

Ms. Dvash on December 7, 2005 because none of his concerns related definitively and specifically to any one of the six fraud categories under SOX.

Clearly, none of Mr. Neuer's comments on December 7, 2005 involved purported violations of the four criminal fraud statutes. Mr. Neuer made no allegations that SI, SA, Mr. Aldor, or Mr. Bessellieu were engaged in criminal mail, wire, bank, or securities fraud.

Turning to the next category, violation of SEC rules and regulations, during the appeal process and motion proceeding, Mr. Neuer has alleged that Mr. Bessellieu was motivated by self-interest when he made the business and personnel decisions that caused the problems Mr. Neuer identified in the December 7, 2005 meeting. Mr. Neuer asserts Mr. Bessellieu's conduct was against the company's code of conduct, unethical, and a violation of the fiduciary responsibilities imposed on managers and directors under SOX. In turn, because SA and SI were reporting their compliance with company policy to the SEC, Mr. Bessellieu's actions represented a material inconsistency between actual business conduct and SEC filings. Mr. Neuer also explained that Mr. Bessellieu engaged in self dealing because he hired senior managers based on his relationships with them rather the best business interests of SA.

As emphasized by the ARB, the critical focus in regards to Mr. Neuer's protected activity is the actual contents of his December 7, 2005 conversation with Ms. Dvash rather than his present explanation for the comments. While Mr. Neuer may have subjectively held the belief that Mr. Bessellieu was putting himself before the business welfare of SA at the time of his December 7, 2005 meeting, he never raised that concern to Ms. Dvash. Likewise, to the extent Mr. Neuer also considered Mr. Bessellieu's actions to be misrepresentative and inconsistent with the company's SEC filings, he made no mention of that problem either on December 7, 2005. In fact, the only specific reference to Mr. Bessellieu made by Mr. Neuer on December 7, 2005 was his comment that Ms. Onate was Mr. Bessellieu's Marketing Director. Through inference, at best, that statement only attributes responsibility for the ongoing employment of an incompetent manager to Mr. Bessellieu. However, no additional inference exists from that reference that Mr. Bessellieu hired Ms. Onate based on his relationship with her or self interest. In other words, though Mr. Neuer believed Mr. Bessellieu's hiring practices violated company policy, Ms. Dvash had no objectively reasonable basis to conclude that Mr. Bessellieu was hiring senior employees based on self interest and personal relationships in light of her December 7, 2005 conversation with Mr. Neuer. Further, Mr. Neuer's unspecific assertion that cronyism was present in SA does not equate to illegal or unethical conduct by Mr. Bessellieu prohibited by the SEC. Consequently, Mr. Neuer's December 7, 2005 comments were objectively insufficient to raise the prospect that Mr. Bessellieu had violated any rule or regulation of the SEC.

Finally, under the sixth category of SOX regulated conduct, Mr. Neuer also maintains that Mr. Bessellieu's actions and management of SA amounted to fraud on the shareholders of SI because his mismanagement and personnel choices deprived the company's shareholder of an intangible right to "honest services," that is, the service of more qualified senior employees. Mr. Neuer also believes that Ms. Onate's incompetence required disclosure to shareholders.

Taking Mr. Neuer's assertion that Mr. Bessellieu's actions were responsible for SA's decline and caused harm to the shareholders of SI as true, material harm to shareholders is not

the only requisite element to show misconduct under the sixth SOX category of fraud against shareholders. Contrary to assertion by the Complainant that nothing more than material harm to shareholders is required, as noted by the ARB in *Platone*, misrepresentation and fraud are necessary elements of protected communications under SOX.

Significantly absent in Mr. Neuer's comments during the December 7, 2005 meeting was any allegation, either direct or through inference, of purposeful fraud against shareholders by SA or Mr. Bessellieu. Subsequently, during the present proceeding Mr. Neuer has indicated that at the time of his conversation with Ms. Dvash he believed the events he was reporting might constitute fraud and that Mr. Bessellieu and his cronies were engaged in illegal activity. Again, even if his subjective belief was reasonable, Mr. Neuer's protected communication must also be objectively reasonable. Taking the most liberal inferences, Mr. Neuer's December 7, 2005 comments charged Mr. Bessellieu with poor business, organizational, and personnel decisions. Standing alone, objectively, that conduct does not also charge Mr. Bessellieu with misrepresentation or constitute illegal activity or fraud against shareholders. Similarly, concerning the disclosure of Ms. Onate's incompetence, absent in Mr. Neuer's December 7, 2005 presentation to Ms. Dvash is any indication or inference that Mr. Bessellieu was hiding Ms. Onate's perceived lack of capability to fulfill her responsibilities from shareholders.

Totally absent in his December 7, 2005 "disclosures," the alleged protected activity, is any comment, statement, claim, or even inference, that Mr. Bessellieu was acting illegally or that he hid or misrepresented his decisions, the adverse consequences of his poor business choices, and Ms. Onate's incompetence from the shareholders of SI. Accordingly, none of the topics Mr. Neuer covered with Ms. Dvash on December 7, 2005 involved any provision of federal law relating to fraud against shareholder as required by 18 U.S.C. § 1514A(a)(1).

CONCLUSION

As an employee of a wholly owned, private subsidiary, Mr. Neuer is not a "covered" employee under SOX per se. However, Mr. Neuer alleged in his SOX complaint that his employment termination had the tacit approval of the CEO of the publicly traded parent corporation. Additionally, the description of his employer's work on the work visa shows little distinction between SA and SI. Further, although not a U.S. citizen, Mr. Neuer worked full time in the United States for SA and the cause of action, his employment termination, arose in the United States. Consequently, Mr. Neuer's SOX complaint, with its attachments, passes a facial challenge based on subject matter jurisdiction under FED. R. CIV. P. 12(b)(1).

Giving inferences favorable to Mr. Neuer and considering his comments in the December 7, 2005 meeting as true, I nevertheless conclude that the contents of his conversation with Ms. Dvash did not objectively, specifically and definitively relate to a violations of any of the six 18 U.S.C. § 1514A(a)(1) categories of criminal fraud laws, SEC rules and regulations, or provisions of federal law relating to fraud against shareholders. As a result, Mr. Neuer's communication to Ms. Dvash on December 7, 2005 was not a protected activity under SOX. Correspondingly, since a protected activity is one of the requisite elements of entitlement for whistleblower protection and relief under SOX, Mr. Neuer's April 6, 2006 SOX complaint facially fails to establish a viable claim under the Act. Accordingly, the Motion to Dismiss Mr. Neuer's April 6,

2006 SOX complaint is warranted under FED. R. CIV. P. 12(b)(6) for failure to state a claim upon which SOX relief may be granted.

ORDER

The Respondents' Motion to Dismiss is **GRANTED**. The April 6, 2006 SOX complaint of Mr. Mannes Neuer is **DISMISSED**.

SO ORDERED:

A

RICHARD T. STANSELL-GAMM
Administrative Law Judge

Date Signed: December 4, 2006
Washington, D.C.

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).