



Issue Date: 19 December 2005

CASE NO. 2005-CER-1

In the Matter of:

MICHELLE M. COOK
Complainant

v.

U.S. ENVIRONMENTAL
PROTECTION AGENCY
Respondent

RECOMMENDED DECISION AND ORDER GRANTING RESPONDENT'S
MOTION FOR SUMMARY DECISION

This case arises out of a complaint of discrimination filed pursuant to the employee protection provision of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or the Act), 42 U.S.C. § 9610 *et seq.*, and implementing regulations set forth at 29 C.F.R. § 24, *et seq.* The Act provides, in relevant part, that no employee shall be fired or in any other way discriminated against because the employee provided information to a State or to the Federal Government, filed or caused to be filed any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of the Act.

In early February 2005, Michelle M. Cook (Complainant) filed a complaint under the Act with the Occupational Safety and Health Administration (OSHA). On September 8, 2005, OSHA noted in its Final Investigative Report that the complaint was not timely filed, and that in addition, the evidence did not support a finding in Complainant's favor on the merits. Complainant requested a hearing before an administrative law judge, and a Notice of Hearing was issued by the undersigned scheduling a hearing on December 14 and 15, 2005 in Atlanta, Georgia. On November 18, 2005, the United States Environmental Protection Agency (EPA, or Respondent) filed a Motion for Summary Decision. Complainant's Response to Agency's Motion for Summary Decision was timely filed on December 5, 2005. On December 9, 2005, the undersigned issued an Order canceling and continuing the date of the hearing due to the complexity of the issues raised by the parties.

Summary of Facts

The facts will be briefly summarized, construing them most favorably to Complainant. Complainant has been employed by Respondent since 1984. (Complainant's Resp. at 2; Resp't Br. in Supp. at 2). Complainant's medical history reflects a number of physical and mental

conditions. (Complainant's Resp. at 2-4; Complainant's Exhibit (CX) C-D). In the summer of 2004, Complainant began working on the Florida Petroleum Reprocessors Superfund Site (Site) as the Enforcement Project Manager. (Resp. Br. at 9). On August 24, 2003, Complainant was reassigned to the Superfund Enforcement and Information Management Branch, Superfund Enforcement and Management Section. (Government Exhibit (GX) 2). Complainant's immediate supervisor was Anita Davis, then Chief of the Superfund Enforcement and Information Management Section, Superfund Enforcement and Information Management Branch, Waste Management Division. (GX 4). Complainant's second level supervisor was Rosalind Brown, Chief of the Superfund Enforcement and Information Management Branch. (GX 5). In September of 2004, Complainant brought a digital voice recorder to work and recorded her surroundings. (Complainant's Resp. at 4-5). On November 14, 2004, Complainant was reassigned under the supervision of Greg Armstrong, Chief of the Superfund Enforcement and Records Management Section, Superfund Enforcement and Information Management Branch, Waste Management Division. (GX 3, 6). On November 22, 2004, Complainant received a counseling memorandum regarding her earlier recording of workplace surroundings in September, 2004. (Complainant's Resp. at 5; CX H; GX 22).

On December 1, 2004, Complainant disclosed to Mr. Armstrong that she believed an EPA attorney, Rudy Tanasijevich, had misrepresented the content and signature status of the Site's consent decree to Region 4 senior management, including the Regional Administrator, Jimmy Palmer. (Complainant's Resp. at 8-9). On the same day, Complainant also reported that she believed that the consent decree's inclusion in the EPA's reporting system as a completed negotiation for 2004 was improper. (*Id.* at 11). On December 7, 2004, Complainant informed Mr. Armstrong and Ms. Brown that she believed that a Department of Justice attorney had released confidential information to potentially responsible parties for the Site, and that a change in the remedy within the consent decree had not been made public, in accordance with the applicable laws. (*Id.* at 12-13). On December 8, 2005, Complainant met with Scott Gordon, Deputy Director of the Water Management Division, Ms. Brown and Mr. Armstrong, in which she stated that events conveyed in the aforementioned concerns violated CERCLA. (GX 7; Complainant's Resp. at 13-14).

Complainant also relayed her concerns regarding a potential conflict of interest in sole-source contracting on the Site. (Complainant's Resp. at 14). Finally, on an unknown date in December, Complainant notified management that she believed that the EPA improperly exercised its soil removal authority in connection with the Site, in an effort to dispense with public notice requirements. (Complainant's Resp. at 15). On December 20, 2004, Complainant visited the office of the attorney responsible for drafting the counseling memorandum, Karol Berrien, in an effort to obtain documents relating to provisions cited therein. An altercation ensued between Ms. Berrien and Complainant, that was subsequently investigated by Bill Anderson and Winston Smith, then Division Director of the Waste Management Division, now retired. (CX U; GX 8, 31). Also on December 20, 2004, Complainant received notice from Mr. Smith that she would be detailed to the Technical Services Section (Detail). (Complainant's Resp. to Interrog. 7 (at GX 27); Complainant's Resp. at 18; Complaint's PreHearing Report at 2). On January 4, 2005, Complainant was told by Winston Smith that the Detail was effective on the same day. (Complainant's Resp. to Interrog. 7; Complainant's Resp. at 19). The standard

form memorializing the Detail reflected an effective date of February 6, 2005. (CX W; GX 15). A list of potential projects was provided for the Detail. (CX V, GX 10).

On January 6, 2005, Mr. Gordon directed that Complainant move to the assigned workspace in Scott Sudweeks' section in accordance with the Detail. (GX 11). Mr. Sudweeks is Chief of the Technical Support Section, Superfund Remedial and Technical Services Branch, Waste Management Division. (GX 14). In response, Complainant proposed a different workspace on January 10, 2005. (GX 12). On that same day, Complainant was informed by Mr. Gordon that the workspace she requested was not available, and was instructed that non-compliance with the directive to relocate from her workspace would be considered "failure to obey a direct order." (CX F; GX 12). Complainant submitted a Confirmation of Request for Reasonable Accommodation on January 13, 2005. (CX D, F). In her request Complainant stated, on the bases of post-traumatic stress disorder and chronic pain, that she requested a workspace with a window and the ability to work from home as needed. (CX D, F). As a result of Complainant's request, Mr. Gordon suspended the directive that Complainant relocate her workspace. (CX F). On January 26, 2005, Mr. Smith emailed Complainant informing her that the incident involving Ms Berrien was determined not to be an offense and no further action by management was required. (CX U). Complainant stated that in early February, Scott Sudweeks rescinded all reasonable accommodations with her assumption of the detail. (Complainant's Resp. at 22). On February 8, 2005, the EPA issued a Determination of Disability finding that Complainant was not disabled, and denying her request for reasonable accommodation. (CX F). On February 9, 2005, Complainant submitted a detailed request for reconsideration of her request for reasonable accommodation. (CX F). On reconsideration, the EPA issued a Determination of Disability on March 30, 2005, again finding that Complainant was not disabled, and denying her request for reasonable accommodation. (CX F). The EPA undertook a fact-finding investigation regarding several workplace incidents pertaining to Complainant on March 4, 2005; the report was issued June 20, 2005. (CX G, DD; GX 31-32).

Legal Conclusions

A motion for a summary decision in an environmental whistleblower case is governed by 29 C.F.R. §§ 18.40 and 18.41. A party opposing such a motion must set forth "specific facts showing that there is a genuine issue of material fact for the hearing." § 18.40(c). If the non-movant "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial," then there is no issue of material fact and the movant is entitled to summary judgment. *Varnadore v. Oak Ridge Nat'l Laboratory*, ARB Case No. 92-CAA-2 and 5, 93-CAA-1 (Sec'y January 26, 1996) (Varnadore I), slip op. at 6, *citing Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); § 18.41.

To establish a *prima facie* case, Complaint needs only to present evidence sufficient to raise an inference of discrimination. *Schlagel v. Dow Corning Corp.*, ARB Case No. 02-092, slip op. at 13, n. 1 (Apr. 30, 2004). Complainant may meet her burden under the whistleblower protection provisions of CERCLA by showing that the EPA is subject to the statute, that she engaged in activity protected under the statute of which the EPA was aware, that she suffered an adverse employment action, and that a nexus existed between the protected activity and the

adverse action. *Id.* at 4, citing *Jenkins v. Envtl. Prot. Agency*, ARB Case No. 98-146, slip op. at 15 (Feb. 28, 2003); see also *Bechtel Constr. Co. v. Sec’y of Labor*, 50 F.3d 926, 933-34 (11th Cir. 1995).

Respondent concedes that it is subject to CERCLA and that it had knowledge of Complainant’s concerns regarding the consent decree and conflict of interest. (Resp’t Br. in Supp. at 19). However, for the reasons set forth below, Complainant has failed to establish a *prima facie* case, in that the alleged adverse actions taken by Respondent are either time-barred or fail to rise to the requisite standard; Complainant likewise fails to demonstrate the existence of a hostile work environment.

Alleged Adverse Action is Time-barred

Complainant alleges that the EPA took a number of adverse employment actions against her because she engaged in protected activity. Among her allegations, Complainant alleges that the Detail was an adverse employment action. (Complainant’s Resp. at 41). For the reasons set forth below, the Detail allegation fails because it is untimely.

A complainant must file a complaint of unlawful discrimination under CERCLA within thirty days of a discrete adverse action. 42 U.S.C. § 9610(b). Specifically, the Act states that any employee who believes she has been discriminated against in violation of subsection (a), may apply to the Secretary of Labor for review “within thirty days after such alleged violation occurs.” § 9610(b). The thirty day limitation period begins to run “on the date that a complainant receives final, definitive and unequivocal notice of a discrete adverse employment action.” *Schlagel*, slip op. at 5. The date that “an employer communicates its decision to implement such an action, rather than the date that the consequences are felt, marks the occurrence of the violation.” *Id.*, citing *Sasse v. Office of the U. S. Attorney*, ARB Nos. 02-077, 02-078, 03-044, ALJ No. 98-CAA-7, slip op. at 6 (Jan. 30, 2004); see generally *Chardon v. Fernandez*, 454 U.S. 6 (1981); *Delaware State Coll. v. Ricks*, 449 U.S. 250 (1980).

Respondent contends that the complaint is not timely. Respondent bases its contention on Complainant’s admission that she filed her complaint with OSHA on February 11, 2005, but that she received notice from Winston Smith that she would be detailed to the Superfund Technical Support Section on January 4, 2005, effective that day. (OSHA Final Investigative Report; Resp’t Br. in Supp. at 14-17; GX 1, 9, 27). As such, Respondent concluded that Complainant had unequivocal notice of the Detail on January 4, 2005, rendering the February 11, 2005 filing date untimely. Complainant states that her complaint, dated February 4, 2005, was faxed February 4, 2005 and February 11, 2005, as well as mailed on February 11, 2005. Complainant amended her Responses to Respondent’s First Set of Interrogatories to so reflect. (Complainant’s Resp. at 36; CX RR). The copy of the complaint provided by Respondent indicates a fax date of February 11, 2005 on the first page, and a fax date of February 4, 2005 on the second page, corroborating Complainant’s assertion that it was faxed, or filed, on both dates. (GX 11). Complainant further asserts that notice of the Detail was not, in fact, final and unequivocal on January 4, 2005, and instead suggests February 6, 2005. (Complainant’s Resp. at 38; GX 15, 32).

Assuming Complainant filed her complaint on February 4, 2005, the alleged discrete adverse action that occurred prior to the thirty-day limitations period preceding the filing of her

complaint, i.e., dating before January 4, 2005, is time-barred, and, therefore, is not an actionable charge on which she can recover. *Schlagel*, slip op. at 6. The date upon which Complainant admitted she first received notice of the Detail was December 20, 2004. (Complainant's Resp. to Interrogs. 7; Complainant's Resp. at 18; Complaint's PreHearing Report at 2). Thus, the statute of limitations on the Detail began to run upon Complainant's receipt of notice on December 20, 2004, and expired on January 20, 2005.

“Discrete adverse employment actions have tangible effects such as ‘termination, failure to promote, denial of transfer, or refusal to hire.’” *Sasse*, slip op. at 28, *quoting National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002). Tangible employment action may also include reassignment with significantly different responsibilities. *Jenkins*, slip op. at 17, *citing Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761 (1998). In *Morgan*, 536 U.S. at 105, 110, the Supreme Court held that discrete discriminatory acts must be filed within the appropriate time period, and that a discrete retaliatory or discriminatory act occurs on the day that it happens. In *Delaware State College v. Ricks*, the Court held that the statute of limitations began to run when Ricks was denied tenure, rather than when his employment was terminated. In *Ricks*, the Court stated that Ricks' employer made its position clear to him on the date it elected to deny tenure, and that communication was effective notice of termination upon the expiry of his one-year terminal contract. *Ricks*, 449 U.S. at 261.

Further, in *Chardon v. Fernandez*, 454 U.S. at 8, the Supreme Court held that the date upon which the relevant statute of limitations began to run was, as under *Ricks*, when “the operative decision was made—and notice given—in advance of a designated date on which employment terminated.” The Court reinforced its holding in *Ricks*, stating that the proper focus for statute of limitation determinations is on the time of the discriminatory act, or discrete adverse action, not the point at which the consequences of the act become painful. *Fernandez*, 454 U.S. at 8. The fact that an employee receives reasonable notice “cannot extend the period within which suit must be filed.” *Id.*

Complainant admitted that Respondent communicated notice of the Detail on December 20, 2004. (Complainant's Resp. to Interrogs. 7; Complainant's Resp. at 18; Complaint's PreHearing Report at 2; GX 33). As such, in accordance with the case law set forth above, notice of the alleged adverse employment action was effectuated on December 20, 2004, though the full effects of the decision were not yet concrete. Additionally, Complainant filed a Merit Systems Protection Board (MSPB) Appeal to stay the Detail on February 15, 2005, that the MSPB denied. (CX T). Complainant's exercising her right to stay the Detail does not disturb the unequivocal nature of the notice Complainant received on December 20, 2004. For example, in *Ricks*, the fact that the employer was entertaining a grievance submitted by the employee did not suggest that the employer's decision to deny tenure was tentative. *Ricks*, 449 U.S. at 261. Rather, the grievance procedure, “by its nature, is a *remedy* for a prior decision, not an opportunity to influence that decision before it is made.” *Id.* (emphasis in original).

Therefore, irrespective of whether the complaint was filed on February 4 or February 11, 2005, the claim relating to the Detail is untimely. Thus, it is unnecessary to determine whether this alleged action was indeed an adverse employment action for the purposes of weighing the merits of Complainant's allegation.

Equitable Tolling Not Applicable

In the first instance, Complainant asserts that the complaint was timely filed on February 4, 2005. (Complainant's Resp. at 36). However, in the alternative, Complainant states "that she may have filed her complaint eight days late does not negate the overall concern Complainant displayed for her rights," and asserts that the EPA was not prejudiced by the late filing. (*Id.* at 37). In an effort to demonstrate that the application of equitable tolling to her situation, Complaint offers only that she diligently pursued her rights "by filing a complaint with the Office of Special Counsel... and by promptly objecting to [the] detail." (*Id.*).

The circumstances surrounding the timing of Complainant's complaint do not warrant equitable tolling of the statute of limitations. Three principal situations where equitable tolling is appropriate are when the defendant has actively misled the plaintiff respecting the cause of action, the plaintiff has been prevented from asserting her rights in an extraordinary way, and the plaintiff has raised the precise statutory claim mistakenly in the wrong forum. *Gutierrez v. Regents of the Univ. of California*, ARB Case No. 99-116, ALJ Case No. 98-ERA-19, slip op. at 3, *citing School Dist. of the City of Allentown v. Marshall*, 657 F.2d 16, 18 (3d Cir. 1981). The Board also noted that in *Rose v. Dole*, 945 F.2d 1331, 1335 (6th Cir. 1991), the Circuit court recognized five factors that must be weighed in determining whether the employee is entitled to equitable tolling: whether the plaintiff lacked actual notice of the filing requirements; whether the plaintiff lacked constructive notice of the requirements; whether the plaintiff diligently pursued her rights; whether the defendant's rights would be prejudiced; and the reasonableness of plaintiff's ignorance of her rights.

Complainant has not advanced any of the principal scenarios in which equitable tolling is appropriate. Accordingly, Complainant is not entitled to this equitable remedy.

Actions Not Time-barred Fail to Constitute Adverse Employment Actions

Complainant devotes a substantial portion of her Response to establishing a *prima facie* case of disability discrimination under the American With Disabilities Act, 42 U.S.C. § 12101, *et seq.* and the Rehabilitation Act, 29 U.S.C. § 701, *et seq.* Complainant asserts that one type of discrimination contemplated by 42 U.S.C. § 9610 is discrimination on the basis of disability. While the environmental whistleblower provisions are not restrictive in their recognition of the many forms in which discrimination may manifest, disability discrimination as alleged here by Complainant is not a cognizable claim under CERCLA.

Complainant alleges that the February 8, 2005 and March 30, 2005 denials of her request for reasonable accommodation are adverse employment actions, and asserts that she was subject to other adverse personnel actions such as "non-selections, denial of leave, denial of excused absences, and the like, giving rise to an inference of disability discrimination based upon her protected CERCLA activity." (Complainant's Resp. at 45). Complainant cites examples of adverse personnel actions such as being denied promotional opportunities, cash awards, and the opportunity to take excused absences, that she was subjected to "inquisitorial treatment concerning her movements, time attendance, hours, doctors' appointments," and health status, and that her timecards were manipulated. *Id.* Complainant cites no supporting documentation for

the actions that she identifies, save for the latter proposition, which either post-date the complaint or fail to substantiate her allegations. (CX II).

The actions alleged by Complainant simply do not rise to the level required to demonstrate an adverse employment action. Discrete adverse employment actions “have tangible effects such as ‘termination, failure to promote, denial of transfer, or refusal to hire.’” *Sasse*, slip op. at 28, *quoting Morgan*, 536 U.S. at 114. The Court of Appeals for the Eleventh Circuit has held that to prove an adverse employment action has taken place, “‘an employee must show a serious and material change in the terms, conditions, or privileges of employment’ that is ‘materially adverse as viewed by a reasonable person in the circumstances.’” *Van Der Meulen v. Brinker Int’l*, 2005 WL 2847252, at *5 (11th Cir. Oct. 31, 2005), *quoting Davis v. Town of Lake Park, Fla.*, 245 F.3d 1232, 1239 (11th Cir. 2001). The Circuit court further held that the action must either be “an ultimate employment decision [such as hiring or firing] or else must meet some threshold of substantiality.” *Id.*, *quoting Stavropoulos v. Firestone*, 361 F.3d 610, 616-17 (11th Cir. 2004), *cert. denied*, 125 S.Ct. 1850, 161 L.Ed.2d 727 (2005).

In alleging the adverse employment actions above, Complainant fails to demonstrate that she suffered any tangible employment consequences therefrom. While it is possible that the EPA’s February 8 and March 30, 2005 disability determinations, concluding that Complainant was not disabled, could qualify as adverse employment actions showing a material change in the terms, conditions, or privileges of employment, it is not for this court to adjudicate the merits of a disability discrimination claim. Such a claim is outside of this court’s jurisdiction. It is not within the scope of CERCLA to find that the EPA’s determination that Complainant was not disabled constitutes disability discrimination. However, assuming, *arguendo*, that the disability determinations did constitute adverse employment actions under CERCLA, each determination post-dates the complaint, such that neither instance could be a basis for the allegations contained therein.

Hostile Work Environment Not Shown

In *Morgan*, the Supreme Court distinguished hostile work environment claims from those based on adverse actions. *Schlagel*, slip op. at 7. The essential difference between conduct amounting to discrete adverse employment action and conduct amounting to a hostile work environment is that the former has “an immediate and tangible effect on the employee’s income or employment prospects while the latter does not... [the latter] affects the employee’s psyche first.” *Sasse*, slip op. at 28. In contrast to adverse actions, “a hostile work environment occurs over a series of days, or perhaps years. *Schlagel*, slip op. at 7, *citing Morgan*, 536 U.S. at 115. Hostile work environment claims are based on “the cumulative effect of individual acts.” *Id.* The court’s task, therefore, is to determine whether “the acts about which the employee complains are part of the same actionable hostile work environment practice, and if so, whether any act falls within the statutory time period.” *Morgan*, 536 U.S. at 117.

Under the theory of hostile working environment, Complainant cites the following instances of harassment:

Rosalind Brown's refusal to grant her a different space when Complainant was ordered to remove her belongings; Scott Sudweeks'... harassing Complainant into doing his job by making her come up with her own job; revocation of her reasonable accommodations; the assault by Ms. Berrien; the refusal on the part of Messrs. Anderson and Gordon to act thereupon; the Bill Bokey investigation prepared at the behest of Winston Smith; Mr. Sudweeks' repeated harassment of Complainant with respect to her leave, time schedule, etc.

(Complainant's Resp. at 46-47). Complainant states that "[a]t least one of these instances – the order to Complainant to 'move her belongings' and the refusal to give Complainant a suitable workspace – occurred within 30 days of Complainant's filing her OSHA complaint," thus concluding that each of the incidents above are admissible under *Morgan*. (Complainant's Resp. at 47). Further, in spite of her voluminous set of attachments, Complainant does not specifically refer the court to supporting documents for the examples provided above.

To establish a hostile work environment, Complainant has to prove that she engaged in protected activity, that she suffered intentional harassment related to that activity, that the harassment was sufficiently severe or pervasive so as to alter the conditions of employment and to create an abusive working environment, and that the harassment would have detrimentally affected a reasonable person and did detrimentally affect Complainant. *Schlagel*, slip op. at 4, citing *Jenkins*, slip op. at 38.¹ "Circumstances germane to gauging work environment include 'the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance, and whether it unreasonably interferes with an employee's work performance.'" *Id.*, quoting *Jenkins*, slip op. at 38.

None of the actions alleged by Complainant throughout her brief, in isolation, or in the aggregate, are sufficiently severe or pervasive to create an abusive working environment that unreasonably interferes with Complainant's work.² *Jenkins*, slip op. at 38. Accordingly, for the

¹ The standard set forth by the Board above comports with that articulated by the Court of Appeals for the Eleventh Circuit. The Circuit court has held that a party wishing to establish a hostile work environment claim must show that he belongs to a protected group, that he has been subject to unwelcome harassment, that the harassment must have been based on a protected characteristic of the employee, such as sex or national origin, that the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive environment, and that the employer is responsible for such environment. *Miller v. Kenworth of Dothan, Inc.*, 277 F.3d 1269, 1275-76 (11th Cir. 2002)

² Actions reviewed by this court as comprising the alleged hostile work environment include, but are not limited to: Complainant's November 22, 2004 letter of counseling (Complainant's Resp. at 6-8; CX H); flexiplace and leave bank issues (Complainant's Resp. at 24-25; CX II); the Detail to the Technical Services Section (Complainant's Resp. to Interrog. 7; CX W; GX 15); Ms. Brown's refusal to grant Complainant's requested workspace (CX F); Mr. Gordon's order directing Complainant to move workspaces, an order that was later suspended (Complainant's Resp. at 22; CX F, EE, FF); Mr. Sudweeks' February 4 and 15, 2005 requests for Complainant's input into the duties of the Detail (Complainant's Resp. at 24; CX AA, MM); the altercation between Complainant and Ms. Berrien (Complainant's Resp. at 7-8, 18; CX U); the alleged revocation of existing reasonable accommodations by Mr. Sudweeks (Complainant's Resp. at 4, 22; CX GG); the fact-finding investigation regarding several workplace incidents pertaining to Complainant, which generated a report issued June 20, 2005 (Complainant's Resp. at 21; CX DD; GX 32).

reasons set forth herein, I find that Complainant has not established a *prima facie* case under the Act. Respondent's Motion for Summary Decision will therefore be granted.

RECOMMENDED ORDER

IT IS ORDERED THAT Respondent's Motion for Summary Decision is GRANTED and that Complainant's complaint is DISMISSED.

A

DANIEL L. LELAND
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") that is received by the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's Recommended Decision and Order. The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file your Petition with the Board, you must serve it on all parties to the case 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 20001-8001. *See* 29 C.F.R. § 24.8(a). You must also serve copies of the Petition and briefs 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 recommended decision becomes the final order of the Secretary of Labor. *See* 29 C.F.R. § 24.7(d).