



Issue Date: 16 April 2018

CASE NO.: 2018-SWD-2

IN THE MATTER OF:

MICHAEL TYLER

Claimant

v.

USA DEBUSK LLC

Respondent

**ORDER DENYING MOTION FOR SUMMARY DECISION AND GRANTING
MOTION TO DISMISS**

This proceeding arises under the Solid Waste Disposal Act (hereinafter the SWDA), 42 U.S.C. § 6971 (1988), and the regulations thereunder at 29 C.F.R. Part 24.

On March 7, 2018, USA Debusk, Inc. (hereinafter Respondent) filed a "Motion to Dismiss Tyler's Claims for Which There Is No Jurisdiction and Memorandum in Support," along with two exhibits against Michael Tyler (hereinafter Complainant). Respondent argues this Court lacks subject matter jurisdiction over Complainant's "RICO" and negligence claims, and that Triangle Equipment, Inc. and USA Services, Inc. are not parties in the current action. Specifically, Respondent contends Complainant failed to assert "RICO" or negligence claims, and failed to allege Triangle Equipment, Inc. and USA Services, Inc. were interested parties before OSHA; thus, the claims and parties must be dismissed.

On March 12, 2018, Respondent filed a "Motion For Summary Judgment and Memorandum in Support," along with eight supportive exhibits. The basis of its motion, in short, is Complainant was not involved in protected activity, his termination was valid due to misconduct and poor performance, Complainant failed to

state the amount of damages he seeks, Complainant failed to identify evidence and disclose witnesses, the Court lacks subject matter jurisdiction over Complainant's "RICO" and negligence claims, and that Triangle Equipment, Inc. and USA Services. Inc. are not proper parties before this Court.

More specifically, Respondent contends Complainant did not engage in any protected activity for the purpose of the SWDA. Respondent further contends Complainant engaged in none of the enumerated activities listed under the applicable statute. Respondent avers Complainant informed them of its mishandling of waste, but he did not testify in any proceeding or cause any proceeding to be filed. Respondent argues that at the time Complainant was terminated, June 10, 2016, he "had done nothing more than suggest to [Respondent]—albeit erroneously—that it was generating hazardous waste." Respondent also contends Complainant did not engage in protected activity because his allegation of improper disposal of hazardous materials is false.

Additionally, Respondent argues that it terminated Complainant due to his misconduct, such as threatening employees, refusing to perform his job as instructed, and interfering with his former co-workers' work. In support of this contention, Respondent cites to exhibits three through eight, which are complaints/statements either from his former co-workers dated February 17, 2016, May 26, 2016, and March 8, 2018, or from his supervisor dated January 27, 2018. Respondent also cites to exhibits three and four as proof Complainant interfered with his former co-workers' work. Respondent further contends Complainant's misconduct consists of his failure to follow directions by continuing to utilize third party vendors, which directly increased Respondent's costs.

Next, Respondent contends Complainant failed to disclose the amount of damages he seeks and the methodology for calculating his damages. As a result, Respondent argues Complainant is precluded from submitting evidence regarding damages. Respondent also argues that Complainant has failed to disclose any witnesses, documents, or anticipated testimony in support of his claim.

Respondent also argues the Court lacks subject matter jurisdiction over Complainant's "RICO" and negligence claims. Respondent contends Complainant did not plead or prove it committed two or more predicate acts that pose a threat of continued criminal activity as required under "RICO." With regard to the negligence claim, Respondent argues Complainant

has no standing to sue on behalf of Harris County, Texas, which is the party he alleges was damaged as a result of Respondent's actions. Respondent also contends that if Complainant alleges he was negligently terminated by Respondent, the claim is meritless because Texas does not recognize negligent termination as a cause of action.

Lastly, Respondent argues summary judgment is warranted because Complainant failed to file a claim against Triangle Equipment, Inc. and USA Services, Inc. before the Occupational Safety and Health Administration (OSHA) within thirty days of the alleged violation. Thus, claims against these parties are time-barred. Furthermore, Respondent contends Complainant failed to assert claims against these parties under 42 U.S.C. § 6971. As a result, Respondent argues Complainant cannot assert new claims and new parties before this Court for the first time.

On March 15, 2017, Complainant responded to the Respondent's Motion to Dismiss, arguing "all courts have the ability to handle the complexities of civil RICO actions, including when such claims are subject to adjudication by arbitration." Complainant also contends Respondent engaged in criminal activities, primarily the "unlawful waste disposal for hire," and subjected him to "harassment, endangerment, gross-mistreatment, harm and loss," and interference with his employment.

On March 19, 2017, Complainant responded to Respondent's Motion for Summary Judgment, arguing there are "triable issues of fact" with respect to Respondent's illegal disposal of "refinery waste" into protected water and soil. Complainant avers that documentation was submitted in support of his claim, such as documents, photographs, and recordings. He also avers he was unaware of the complaints (i.e., exhibits included with Respondent's motion) made by former co-workers until after he was terminated. He highlights the fact the complaints were neither signed by him, and that "the time-line of exhibited statements [were] concerted to the time the Complainant raised opposition to unlawful company activities." Complainant also discusses the temporal proximity of his termination in relation to his protected activity. In addition, Complainant contends Respondent was engaged in "racketeering activities," which involved contracts, acquisitions, and mergers concerning the handling, hauling, transferring, storing, and disposing of waste.

DISCUSSION

The standard for granting summary decision is set forth at 29 C.F.R. § 18.72(a) (2015). See, e.g., Stauffer v. Wal-Mart Stores, Inc., ARB Case No. 99-STA-21 (Nov. 30, 1999) (under the Act and pursuant to 29 C.F.R. Part 18 and Federal Rule of Civil Procedure 56, in ruling on a motion for summary decision, the judge does not weigh the evidence or determine the truth of the matter asserted, but only determines whether there is a genuine issue for trial); Rollins v. American Airlines, Inc., ARB Case No. 04-140, Case No. 2004-AIR-9 (April 3, 2007); Webb v. Carolina Power & Light Co., Case No. 1993-ERA-42, slip op. at 4-6 (Sec'y July 17, 1995). This section, which is derived from Fed. R. Civ. P. 56, permits an administrative law judge to recommend decision for either party where "there is no genuine issue as to any material fact and . . . a party is entitled to summary decision." 29 C.F.R. § 18.72(a). Thus, in order for Complainant's motion to be granted, there must be no disputed material facts upon a review of the evidence in the light most favorable to the non-moving party, and Complainant must be entitled to prevail as a matter of law. Gillilan v. Tenn. Valley Auth., Case Nos. 1991-ERA-31 and 1991-ERA-34 (Sec'y August 28, 1995); Stauffer, supra.

The purpose of a summary decision is to pierce the pleadings and assess the proof, in order to determine whether there is a genuine need for a trial. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). The determination of whether a genuine issue of material fact exists must be made by viewing all evidence and factual inferences in the light most favorable to the non-moving party. Trieber v. Tenn. Valley Auth., Case No. 1987-ERA-25 (Sec'y Sept. 9, 1993). The determination of whether a fact is "material" is based on the substantive law upon which the claim is based. Adler v. Wal-Mart Stores, 144 F.3d 664, 670-671 (10th Cir. 1998); Saporito v. Cent. Locating Servs, Ltd., ARB No. 05-004, slip op. at 5-6 (Feb. 28, 2006) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). A material fact is one that might affect the outcome of the suit under the governing law, and a dispute about a material fact is genuine if the evidence is such that a rational trier of fact could resolve the issue either way. Adler, supra at 670-671 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 248, 106 S. Ct. 2505 (1986)); Saporito, supra at 5.

The non-moving party must present affirmative evidence in order to defeat a properly supported motion for summary decision. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247

(1986); Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). It is enough that the evidence consists of the party's own affidavit, or sworn deposition testimony and a declaration in opposition to the motion for summary decision. Id. at 324. Affidavits must be made on personal knowledge, set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated therein. F.R.C.P. 56 (e). If the movant will not bear the burden of persuasion at trial, such a movant may make its **prima facie demonstration simply by pointing out that the evidence in the record would not permit the non-movant to carry its burden of proof at trial.** Id.; Celotex v. Catrett, 477 U.S. 317, 327, 106 S. Ct. 2548, 2554 (1986).

If the movant carries this initial burden, the non-movant, in order to defeat a motion for summary decision, "may not rest upon mere allegations or denials in pleadings, but [rather] must set forth specific facts showing that there is a *genuine issue for trial.*" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). A genuine issue exists if the non-movant produces sufficient evidence of a material fact so that the fact-finder must resolve differing versions at trial. Anderson, supra at 249.

As discussed below, I find that summary decision is inappropriate in this matter, as there remains a genuine issue of material fact.

A. The Statutory Protection

The SWDA "is a comprehensive environmental statute that governs generation, treatment, storage, and disposal of solid and hazardous waste." Meghrig v. KFC Western, Inc., 516 U.S. 479, 483 (1996). The Act's purpose is to promote the reduction of hazardous waste and the treatment, storage, or disposal of such waste so as to minimize threats to human health and the environment. 42 U.S.C.A. § 6902. The SWDA affords any employee who believes that he has been fired or otherwise discriminated against for engaging in protected activity the right to file a complaint with the Secretary of Labor. 42 U.S.C. § 6971(b). Upon finding a violation of the SWDA, abatement and other remedies may be awarded. Id.

The employee protection provision of the SWDA provides:

No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated

against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter or under any applicable implementation plan, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter or of any applicable implementation plan.

42 U.S.C. § 6971(a).

The regulations promulgated under that statute further provide that "[n]o Respondent subject to the provisions of [the Solid Waste Disposal Act, 42 U.S.C. § 6971] . . . may discharge or otherwise retaliate against any employee . . . because the employee . . . engaged in any of the activities specified in this section." 29 C.F.R. § 24.102(a). In accordance with 29 C.F.R. § 24.102(b)(3):

It is a violation for any Respondent to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner retaliate against any employee because the employee has . . . [a]ssisted or participated, or is about to assist or participate, in any manner in such a proceeding or in any other action to carry out the purposes of such statute.

A complainant must establish the following to show unlawful discrimination: (1) he engaged in protected activity under the Act, (2) Respondent was aware, (3) he suffered an adverse employment action, and (4) the protected activity was the motivating factor for the adverse action (i.e., there is a nexus between the protected activity and the adverse action).

The regulations further provide that a complaint will be dismissed "if the respondent demonstrates by a preponderance of the evidence that it would have taken the same unfavorable personnel action in the absence of complainant's protected activity." 29 C.F.R. § 24.104(d)(4).

Based on the record before me, I shall examine the record in the light most favorable to Complainant to determine if there is a genuine issue of material fact.

B. Protected Activity

The SWDA provides that no person shall discriminate against any employee "by reason of the fact" that the employee has engaged in the following enumerated protected activities:

filed, instituted, or caused to be filed or instituted any proceeding under this chapter or under any applicable implementation plan, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter or of any applicable implementation plan.

42 U.S.C. § 6971(b).

The ARB has held that the term "proceeding" is to be construed broadly to encompass "all phases of a proceeding that relate to public health or the environment, including an internal or external complaint that may precipitate a proceeding." Lee v. Parker-Hannifin Corp., Case No. 2009-SWD-3, slip op. at 7 (ARB Feb. 29, 2012). The term "any other action" has been interpreted to extend whistleblower protection to internal complaints made to supervisors and others. Kansas Gas & Electric v. Brock, 780 F.2d 1505 (10th Cir. 1985).

A complainant is not required to prove an actual violation of the underlying statute. Yellow Freight System, Inc. v. Martin, 954 F.2d 353, 357; Crosier v. Westinghouse Hanford, Case No. 1992-CAA-3, slip op. at 4 (Sec'y Jan. 12, 1994). Instead, a complainant's complaint must be made in good faith and "grounded in conditions constituting reasonably perceived violations of the environmental acts." Johnson v. Old Dominion Security, Case No. 1986-CAA-3 (Sec'y May 29, 1991).

For purposes of the present Motion for Summary Decision, Respondent concedes that on June 10, 2016, Complainant did engage in conduct (i.e., alleging Respondent was generating hazardous wastes and improperly disposing of it), which is protected under the statute, and was subsequently terminated that day. Respondent contends, however, that the allegations are false, and that its motion should be granted. However, when Complainant made the internal complaint(s), it was only required that he make the complaint in good faith and reasonably believe there was a violation of an environmental act. Therefore, the truth of the matter asserted is not an element that must be established under the SWDA.

Furthermore, although Respondent alleges Complainant was terminated due to misconduct and poor performance, which are compelling arguments, Complainant's allegation that he was terminated due to his protected activity goes to the essence of the statute under review. In fact, Complainant cites to the temporal proximity between the allegations made on June 10, 2016, and his termination the same day. According to 29 C.F.R. § 24.104(d)(3), motive can be established through direct or circumstantial evidence. For instance, the nexus between the protected activity and adverse action can be established by showing the adverse action took place shortly after the protected activity. Id. Thus, temporal proximity is sufficient to raise an inference of whistleblower retaliation. Consequently, in this case, the question remains whether Respondent's act of terminating Complainant was for a legitimate, nondiscriminatory reason, or whether the reasons offered by Respondent are actually a pretext for discrimination. While Respondent's arguments may prevail after a full consideration of the merits of the case following a formal hearing, Respondent has not proven, as of now, Complainant will be unable to meet its burden of proof at the hearing.

Therefore, based on the submission of the parties, and without weighing the evidence or determining the truth of the matters asserted, I find genuine issues of material fact exists in the present matter; as a result, Respondent's Motion for Summary Judgment is inappropriate and is hereby **DENIED**.

C. Subject Matter Jurisdiction

Moreover, dismissal of whistleblower complaints without a hearing may be appropriate under the summary disposition provisions of OALJ's rules at 29 C.F.R. §§ 18.70 and 18.72, or under Fed. R. Civ. P. 12. See 29 C.F.R. 18.10(a) ("The Federal Rules of Civil Procedure (FRCP) apply in any situation not provided for or controlled by these rules, or a governing statute, regulation, or executive order.").

Subject matter jurisdiction "refers to a tribunal's power to hear a case." Morrison v. Nat'l Australian Bank, 130 S. Ct. 2869, 2877 (2010) (citing Union Pac. v. Bhd. of Locomotive Eng'rs, 130 S. Ct. 584, 596-97 (2009)). Subject matter jurisdiction "presents an issue quite separate from the question whether the allegations the plaintiff makes entitles him to relief," Morrison, 130 S. Ct. at 2877, and should not be confused "with the wholly separate question whether [a complainant's] actions might be covered as 'protected

activities'" under whistleblower laws over which the Department of Labor has jurisdiction. Sasse v U.S. Dep't. of Justice, ARB No. 99-053, ALJ No. 1998-CAA-007, slip op. at 3 (ARB Aug. 31, 2000).

The Administrative Review Board explained in Sasse that the Department of Labor's subject matter jurisdiction is invoked "when the parties are properly before it, the proceeding is of a kind or class which the court is authorized to adjudicate, and the claim set forth in the paper writing invoking the court's action is not obviously frivolous." Sasse, slip op. at 3 (quoting West Coast Exploration Co. v. McKay, 213 F.2d 582, 591 (D.C. Cir. 1954), cert. denied, 347 U.S. 989 (1954)). The United States Supreme Court has also explained that subject matter jurisdiction--

[I]s not defeated . . . by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover. For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy. If the court does later exercise its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction.

Bell v. Hood, 327 U.S. 678, 681-82 (1946), (citing Swafford v. Templeton, 185 U.S. 487, 493-94, 22 S. Ct. 783, 785-86 (1902)).

As discussed previously, Complainant alleges a claim under "RICO." While Section 1107 of SOX amended the RICO statute, see 18 U.S.C. § 1513(e), Section 1107 protects employees of public and privately held companies who make truthful reports to a "law enforcement officer," when the disclosure relates to the commission of a federal offense, and is enforceable by the Department of Justice, not the Department of Labor.

Furthermore, Complainant alleges his cause of action falls squarely under 18 U.S.C. § 1962, and asserts it relates to Respondent's engagement of criminal activity with other entities in which he was subjected to "harassment, endangerment, gross-mistreatment, harm and loss" to include the interference with his employment. Specifically, Complainant alleges a pattern of "racketeering activities" by Respondent. Because Complainant is a pro se litigant, this Court is lenient regarding the articulation of his claim, but the Court is unforgiving of the fact that Complainant failed to assert a "RICO" claim before OSHA within 30 days of the alleged violation under SWDA.¹ 42 U.S.C. § 6971(b). Accordingly, this claim is hereby **dismissed**.²

Lastly, Complainant alleges negligence and a cause of action against Triangle Equipment, Inc. and USA Services, Inc.

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We construe complaints and papers filed by pro se complainants "liberally in deference to their lack of training in the law" and with a degree of adjudicative latitude. Young v. Schlumberger Oil Field Serv., ARB No. 00-075, ALJ No. 2000-STA-28, slip op. at 8-10 (ARB Feb. 28, 2003) (citing Hughes v. Rowe, 449 U.S. 5 (1980)). At the same time we are charged with a duty to remain impartial; we must "refrain from becoming an advocate for the pro se litigant." Id. We recognize that while adjudicators must accord a pro se complainant "fair and equal treatment, [such a complainant] cannot generally be permitted to shift the burden of litigating his case to the [adjudicator], nor to avoid the risks of failure that attend his decision to forgo expert assistance." Griffith v. Wackenhut Corp., ARB No. 98-067, ALJ No. 97-ERA-52, slip op. at 10 n.7 (ARB Feb. 29, 2000) (quoting Dozier v. Ford Motor Co., 702 F.2d 1189, 1194 (D.C. Cir. 1983)). Affording a pro se complainant undue assistance in developing a record would compromise the role of the adjudicator in the adversary system. See Young v. Schlumberger Oil Field Serv., ARB No. 00-075, ALJ No. 2000-STA-28, slip op. at 9 (citing Jessica Case, Note: Pro Se Litigants at the Summary Judgment Stage: Is Ignorance of the Law and (sic) Excuse?, 90 Ky. L.J. 701 (2002)).

Peck v. Safe Air Int'l, Inc., ARB No. 02-028, slip op. at 19 (ARB Jan. 30, 2004); see also Wallum v. Bell Helicopter Textron, Inc., ARB No. 09-081 (ARB Sept. 2, 2011).

² Based on Complainant's articulation of his claim, it appears his cause of action would have arisen under Sarbanes-Oxley, Section 608, which is adjudicated by the Department of Labor, but for the fact Complainant failed to allege Respondent is a publicly-traded company (and the claim was not timely filed before OSHA). See 18 U.S.C. § 1514A.

However, this Court does not have the authority to adjudicate negligence claims or actions by parties not before this Court, such as Triangle Equipment, Inc. and USA Services, because Complainant never alleged any cause of action before OSHA against these parties. Accordingly, the negligence claim is also hereby **dismissed**, and Triangle Equipment, Inc. and USA Services, Inc. **are not parties** before this Court.

D. Failure to Disclose Damages, Evidence, and Witnesses

As a final point, I find Respondent's Motion for Summary Judgment is not the correct motion to discuss damages or the disclosure of witnesses and evidence. I also find the issue of damages has been prematurely raised by Respondent, and I shall not dispose of the matter due to Complainant's failure to discuss damages. Furthermore, with respect to Complainant's disclosure of witnesses and evidence, he disclosed this information on March 12, 2018, which was three days after the March 9, 2018 deadline stated in the Notice of Hearing and Pre-Hearing Order. Since Complainant is a pro se litigant, this Court shows deference and shall not penalize Complainant for a late submission by only a few days.

Considering the foregoing,

IT IS HEREBY ORDERED that Respondent's Motion for Summary Judgment be, and it is, **DENIED**.

IT IS HEREBY ORDERED that Respondent's Motion to Dismiss be, and it is, **GRANTED**.

ORDERED this 16th day of April, 2018, at Covington, Louisiana.

LEE J. ROMERO JR.
Administrative Law Judge

NOTICE OF APPEAL RIGHTS FOR DISMISSAL: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board ("the Board") within 10 business days of the date of this decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

The date of the postmark, facsimile transmittal, or e-filing will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the

Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. See 29 C.F.R. §§ 24.109(e) and 24.110.