UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

December 18, 2019

ARMANDO HUBERTH CRESPO, Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	OCAHO Case No. 18B00082
FAMSA, INC., Respondent.	)	

ORDER ON SUMMARY DECISION

This is an action arising under the nondiscrimination provisions of the Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b (2019). Pending before the Court are the parties' cross-motions for summary decision.

I. BACKGROUND

Complainant, Armando Huberth Crespo, is a United States citizen. Respondent, FAMSA, Inc., is a retail chain that specializes in selling household items, including furniture, electronics, mattresses, computers and appliances. Answer at 1. FAMSA USA is a subsidiary of Grupo FAMSA of Monterrey, Mexico, and operates twenty-four stores in Texas and Illinois, employing about 550 employees. Answer at 1.

FAMSA, Inc. (Respondent or the company) hired Complainant for the first time in August 2008 to work in a California store, at which time he was a temporary resident with work authorization. Resp't Mot. Summ. Dec., Ex. A at 16:25–17:1, 22:21–25 (hereinafter "Depo."). He was transferred to Las Vegas, laid off, and then rehired for a store in Chicago. *Id.* at 18:2, 19:5–11. In 2013, after he became a United States citizen, Complainant transferred to Dallas. *Id.* at 19:11–13; 23:1–3. In January 2016, Respondent terminated Complainant for not meeting sales quotas. *Id.* at 20:1–18. Complainant testified that he was ill during this time and did not meet his sales quotas for three months. *Id.* at 20:6–18. Later in 2016, Respondent rehired Complainant to work in the same store. *Id.* at 21:1– 6. It is undisputed that Complainant was working in a store in Dallas, Texas, when he was terminated on or about June 22, 2017. According to the deposition testimony, Respondent received a Performance Improvement

Counseling Form when he was terminated indicating that he was terminated due to "inappropriate behavior and insubordination in front of coworkers and customers." Depo. at 40: 19–25, 41:1–2. In its Answer, Respondent asserts that Complainant was fired for failing to attend mandatory training as well as for insubordination. Answer at 2.

Complainant thereafter filed a charge with the Immigrant and Employee Rights Section of the Civil Rights Division of the Department of Justice (IER), on or about October 25, 2017. On May 15, 2018, IER sent him a letter advising him that he had the right to file a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO).

On August 15, 2018, Complainant filed an OCAHO complaint against Respondent alleging that the company terminated him because of his citizenship status and in retaliation for complaints he made about the company's aversion to United States citizens. Respondent filed an answer denying the material allegations of the complaint. After some delays regarding scheduling the Complainant's deposition, on September 17, 2019, Respondent filed a motion for summary decision. Complainant timely responded, and filed a cross-motion for summary decision. Respondent did not file a response to Complainant's cross-motion.

II. THE PARTIES' POSITIONS

A. Respondent's Motion

Respondent contends that it is entitled to summary decision because Complainant has offered no evidence to support his claim of discrimination or retaliation, his own sworn testimony makes clear that the company operated within its rights as an employer to terminate his employment, and there is no indication that his citizenship status was considered or was a factor in the termination decision. In addition, Respondent argues that the retaliation claim fails as a matter of law because Complainant admitted he only told similarly situated coworkers about his intention to file an Equal Employment Opportunity Commission (EEOC) charge and did not provide evidence that any manager at the company knew about this comment. The motion was accompanied by a transcript of Complainant's deposition. Respondent did not submit any other exhibits.

B. Complainant's Response

Complainant's Response in Opposition and Motion for Summary Judgment urges that he was not terminated for the reasons that Respondent gave. Instead, Complainant contends that Respondent terminated him because of his citizenship status and because a Branch Manager, Ms. Socorro Munoz, found out about his intent to file a complaint with the EEOC. He asserts that Respondent still employs fifteen individuals who were unauthorized for employment, even though they "may have missed required training or may have received warnings." Complainant Resp. at 3. He also contends that Respondent terminated an employee who was a U.S. citizen and demoted two other employees who had legal status. He also states that one employee was a U.S. citizen and was terminated, and two others with legal status were demoted. He asserts that the company has not provided proof as to the reasons for his termination.

Complainant submitted a number of exhibits with his response and motion: A) two attendance training sheets, one undated and one dated February 9, 2017; five "Certificate of Achievement" certificates from 2013 and 2014; B) medical records from October and December 2015; C) three reports, one of which is dated December 31, 2016, the other two without dates that appear to show sales figures, and three additional certificates, one undated and two from 2014 recognizing Complainant as a "Million Dollar Salesperson."

III. LEGAL STANDARDS

A. Summary Decision

Under the OCAHO rules, the Administrative Law Judge (ALJ) "shall enter a summary decision for either party if the pleadings, affidavits, material obtained . . . show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." 28 C.F.R. § 68.38(c).[1] Section 68.38(c) is similar to and based on Rule 56(c) of the Federal Rules of Civil Procedure, which provides for the entry of summary judgment in federal cases. Accordingly, OCAHO jurisprudence looks to federal case law interpreting that rule for guidance in determining when summary decision is appropriate. *See United States v. Candlelight Inn*, 4 OCAHO no. 611, 212, 222 (1994).

"An issue of fact is genuine only if it has a real basis in the record" and "[a] genuine issue of fact is material if, under the governing law, it might affect the outcome of the suit." *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).[2] However, in the absence of any proof, the Court will not assume that the nonmoving party could or would prove the necessary facts. A party opposing a motion for summary decision may not demand a trial simply based on a speculative possibility that a material issue might turn up at trial. *See generally United States v. Manos & Assocs.*, Inc., 1 OCAHO no. 130, 877, 884 (1989). The Fifth Circuit Court of Appeals, the jurisdiction where the events in this case occurred, has refused to find a "genuine issue" where the only evidence presented is uncorroborated and self-serving testimony. *BMG Music v. Martinez*, 74 F.3d 87, 91 (5th Cir. 1996); *see Vais Arms, Inc. v. Vais*, 383 F.3d 287, 294 (5th Cir. 2004).

---

[1] *See* Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2016).

[2] Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders.

"While the nonmoving party is entitled to all the favorable inferences that can be drawn from any reasonable construction of the facts in evidence, those inferences may not be so tenuous as to amount to speculation." *Angulo v. Securitas Sec. Servs. USA, Inc*., 11 OCAHO no. 1259, 8 (2015). Furthermore, "[w]hen a party who would bear the burden of proof at trial is unable to make a showing sufficient to establish an element essential to that party's case, summary [decision] against that party will ensue." *Id.* at 9 (relying on *Catrett*, 477 U.S. 317 at 322–23).

B. The Burdens of Proof

The familiar burden shifting analysis in employment discrimination cases is that established by *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–05 (1973), and its progeny. First, the complainant must establish a prima facie case of discrimination; second, the respondent must articulate some legitimate, nondiscriminatory reason for the challenged employment action; and third, if the respondent does so, the inference of discrimination raised by the prima facie case disappears, and the complainant then must prove by a preponderance of the evidence that the respondent's articulated reason is false and that the respondent intentionally discriminated against the plaintiff. *Id.*; *see generally Reeves v. Sanderson Plumbing Prods., Inc*., 530 U.S. 133, 142–43 (2000); *Saint Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 510–11 (1993); *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 252–53 (1981).

1. Discriminatory Discharge

To establish a prima facie discharge case under the traditional formulation, Complainant must show that he is a member of a protected class, was qualified for the position held, was discharged, and was replaced by a person not in Complainant's protected class. *Singh v. Shoney's, Inc.*, 64 F.3d 217, 219 (5th Cir. 1995) (citing *Vaughn v. Edel*, 918 F.2d 517, 521 (5th Cir. 1990)). Alternatively, in a case alleging disparate treatment, the discharged employee may establish the fourth prong by a showing that the employer treated others similarly situated but outside the complainant's protected class more favorably. *Okoye v. Univ. of Tex. Houston Health Sci. Ctr*, 245 F.3d 507, 512 (5th Cir. 2001).

For employees to be similarly situated, those employees' circumstances, including their misconduct, must have been "nearly identical." *Little v. Republic Ref. Co*., 924 F.2d 93, 97 (5th Cir. 1991); *see also Smith v. Wal-Mart Stores*, 891 F.2d 1177, 1180 (5th Cir. 1990) (per curiam). *Perez v. Tex. Dep't of Crim. J., Inst. Div.*, 395 F.3d 206, 213 (5th Cir. 2004).

2. Retaliation

An individual can show a prima facie case of retaliation by presenting evidence that: 1) the individual engaged in conduct protected by § 1324b; 2) the employer was aware of the protected conduct; 3) the individual suffered an adverse employment action; and 4) there was a causal connection between the protected activity and the adverse employment action. *Shortt v. Dick Clark's AB Theatre, LLC*, 10 OCAHO no. 1130, 6 (2009). To establish causation, the complainant must show that the decision maker knew of the employee's protected activity. *Sefic v. Marconi Wireless*, 9 OCAHO no. 1125, 17 (2007).

In order to qualify as protected conduct in this forum, the conduct must implicate some right or privilege specifically secured under § 1324b, or a proceeding under that section. *See, e.g.*, *Harris v. Haw. Gov't Emps. Ass'n*, 7 OCAHO no. 937, 291, 295 (1997); *Yohan v. Cent. State Hosp.*, 4 OCAHO no. 593, 13, 21–22 (1994) (finding no OCAHO jurisdiction over threats to report employer to "EEOC, the Immigration Department [*sic*], the American Counsel General, the ALCU [*sic*], the NAACP, Georgia Legal Services," or agencies other than IER or OCAHO); *De Araujo v. Joan Smith Enter.*, 10 OCAHO no. 1187 (2013); *see also Cavazos v. Wanxiang Am. Corp.*, 10 OCAHO no. 1138, 1–2 (2011); *Arres v. IMI Cornelius Remcor, Inc.*, 333 F.3d 812, 813–14 (7th Cir. 2003) (observing that § 1324b(a)(5) does not provide a remedy for individuals who filed a charge or complaint for violations of immigration law, rather than for discrimination based on citizenship status or national origin).

IV. DISCUSSION AND ANALYSIS.

A. Discriminatory Discharge

Respondent did not specifically challenge the first three elements of Complainant's prima facie discharge case, and it is evident from the record that as a U.S. citizen, Complainant is a protected individual within the meaning of 8 U.S.C. § 1324b(a)(3). Depo. at 15–16. It is similarly not contested that Complainant had the basic qualifications for the job that he performed for a period of about eight years, or that he suffered an adverse employment action when he was fired. Respondent argues that his prima facie case falters at the threshold because he has not established that Respondent treated him differently than other similarly situated individuals outside Complainant's protected class.

As regards the fourth prima facie element, whether Respondent treated similarly situated persons outside of Complainant's protected class more favorably, Complainant identifies several U.S. citizens who Respondent terminated or demoted and one non-U.S. citizen who, he claims, Respondent treated more favorably.

As noted above, to withstand a properly supported motion, the nonmoving party who bears the burden of proof at trial must come forward with sufficient competent evidence to support all the essential elements of the claim. *Primera Enters., Inc.*, 4 OCAHO no. 615 at 259, 261. The Fifth Circuit has found that, "[e]mployees who have different work responsibilities or who are subjected to adverse employment action for dissimilar violations are not similarly situated." *Lee v. Kansas City Southern Ry. Co.*, 574 F.3d 253, 259–60 (5th Cir. 2009). Instead, "an employee who proffers a fellow employee as a comparator [must] demonstrate that the employment actions at issue were taken under nearly identical circumstances." *Id.* at 260 (citation and internal quotation marks omitted). The employment actions compared "will be deemed to have been taken under nearly identical circumstances when the employees being compared held the same job or responsibilities, shared the same supervisor or had their employment status determined by the same person, and have essentially comparable violation histories." *Id.* Further, Complainant's conduct that resulted in the adverse employment action "must have been nearly identical to that of the proffered comparator who allegedly drew dissimilar employment decisions." *Id.* (citation and internal quotation marks omitted). Finally, the comparator must be

outside Complainant's protected class. *Singh*, 64 F.3d at 219. In this case, the appropriate comparators are non-U.S. citizen employees.

Complainant provided no corroborative evidence to demonstrate that Respondent treated similarly situated non-U.S. citizen employees more favorably. The only evidence presented was Complainant's generalized statements in a deposition, and one more particular claim made in a brief. "'Mere conclusory allegations or denials'" in legal memoranda or oral argument are not evidence and cannot by themselves create a genuine issue of material fact where none would otherwise exist." *United States v. Hudson Delivery Service Inc.*, 7 OCAHO 945, 376 (1997). At the deposition, Complainant named a number of people who work in the store that do not have legal status to work, stating that of the ten salespersons, seven did not have status. Depo. at 35:9–21. He stated that the third person in the company hierarchy is not authorized to work, whereas the employees who were let go have status. *Id.* at 36:4–8. The allegation that Respondent employs a number of workers who do not have legal work status does not state a claim for disparate treatment as Respondent produced no corroboration to establish that his allegation is true, and that these employees had nearly identical work responsibilities and work histories, but were treated differently. *See BMG Music*, 74 F.3d at 91. Likewise, the unsupported claim that Respondent fired or demoted individuals authorized to work, like Complainant, is not sufficient as the class of persons is not an appropriate comparator.

In his response and motion, Complainant includes an incident where an alleged undocumented worker, Ms. Guzman, "deleted one of [a sales representative and permanent resident]'s [c]ontracts and used her login credentials for her to make another contract." Complainant's Mot. Summ. Dec. at 4. According to Complainant, per the Employee Handbook, Ms. Guzman should have been terminated, but Socorro Munoz, the branch manager, protected her. *Id.*
Even if the Court considered the statement as evidence, there is no indication that Ms. Guzman, was similarly situated in all respects—that she had a similar job and displayed inappropriate behavior and insubordination. *See Martinez v. Superior Linens*, 10 OCAHO no. 1180, 8–9 (2013). Thus, the Complainant has not met his burden of proof to establish a prima facie case of discriminatory discharge based on Complainant's allegation that Ms. Guzman was a similarly situated individual.

Additionally, Complainant testified to statements made by Socorro Munoz. Ms. Munoz, who is a lawful permanent resident, was named branch manager at the Dallas FAMSA store in 2014. Depo. at 23:18–22, 31:4–5. Ms. Munoz and her human resources department approved Complainant's rehire. *Id.* at 24:1–3. However, Complainant contends that Ms. Munoz also terminated him in June 2017 based on his citizenship status.[3]

In his complaint, Complainant states that Ms. Munoz told him that "because I am a legal citizen [*sic*] in this country I can find other jobs . . . her aversion to this fact was to the point of

[3] In his response to the motion for summary decision, Complainant states that he was terminated by Ms. Alondra Benites (Human Resources) and Ms. Jackeline Madera (Supervisor), although in an earlier statement in the response he indicates that Ms. Munoz terminated him. Complainant Resp. at 2, 5.

screaming at me, ill treatment, pounding on my face and desk in front of the rest of my colleagues . . . Never the less my performance was always the number one salesperson . . . When I let her know my intention of placing a complaint, at the third day I was fired without any warning." Compl. at 15. In his deposition, Complainant stated based on Ms. Munoz's behavior, he believed his termination was due to his citizenship. Depo. at 29:8–10. Specifically, he testified that she "would get up here and would be screaming at me. She would hit my desk when talking to me." Depo. at 29:8–10. He further testified that "[s]he would say things like if I didn't like it I could leave; that I was a citizen. I could get a job whenever I wanted to or I could live off the government." *Id.* at 29:11–14. He also testified that Respondent fired employees who "had legal status," and has continued to employ unauthorized workers. *Id.* at 38:18–21, 24–25.

Complainant testified that Ms. Munoz made the statements about his ability to obtain another job due to his citizenship status approximately three times. Depo. at 34:12–18. Although Ms. Munoz referred to Complainant's citizenship status, the reference is not inherently negative or derogatory. The observation that if Complainant did not like his job he could find other work, and there is nothing about his immigration status barring him from doing so, is certainly ill-tempered, but is no more than that. As Respondent noted, Complainant was rehired after a prior termination during the time that Ms. Munoz was supervising the office, and at a time when Complainant had legal status. Accordingly, Complainant has not met his burden of production to show that Respondent treated similarly situated non-U.S. citizen workers or unauthorized workers differently. A failure of proof on any element upon which the nonmoving party bears the burden necessarily renders all other facts immaterial. *See Catrett*, 477 U.S. at 322–23. Thus, Respondent's motion for summary decision related to Complainant's discriminatory discharge claim is GRANTED.

B. Retaliation

Under § 1324b(a)(5), an employer may not retaliate against any individual for the purpose of interfering with any right or privilege secured under § 1325b or because the individual intends to file a charge or a complaint under § 1324b. Here, Complainant testified at the deposition that he told two or three co-workers that he wanted to file a complaint. Depo. at 44:10–15. As an initial matter, Complainant said he was going to complain to the employment department, the EEOC, and to human resources at FAMSA. Depo. at 40:1–2. A retaliation claim under § 1324b(a)(5) is limited to retaliation for asserting a right or privilege under § 1324b, and does not extend to retaliation "for filing or planning to file a charge with an entity other than [IER] or a complaint with an entity other than [OCAHO]." *Yohan*, 4 OCAHO no. 593 at 21–22 (holding that filing a complaint with the EEOC is not a protected activity under § 1324b(a)(5)). In any event, according to his sworn testimony at the deposition, Complainant also did not tell a manager about his desire to file a complaint, and when asked if he had any reason to think that his co-workers told Ms. Munoz, he said, "I don't know." Depo. at 44:16–22. While he states in the motion that he mentioned his intent to file a complaint with the EEOC in front of Ms. Munoz, this statement is again not evidence. Complainant's Mot. Summ. Dec. at 5. Complainant did not point to any evidence suggesting that whoever was responsible had knowledge about any conduct that was specifically protected under § 1324b. The only evidence adduced about the

causal connection between his desire to file a complaint and his termination is that he was terminated three days later.

"There must be proof that the decision maker knew of the protected conduct at the time the decision was made before an inference of causation may arise." *Rainwater v. Doctor's Hospice of Ga., Inc.*, 12 OCAHO no. 1300, 17 (2017) (citing *Pomales v. Celulares Telefonica, Inc.*, 447 F.3d 79, 85 (1st Cir. 2006)). Circumstantial evidence of the causal connection includes temporal proximity of the adverse action to the protected activity, differential treatment, and comments by an employer that intimate a retaliatory mindset. *Chellouf v. Inter American Univ. of P.R.*, 12 OCAHO no. 1269, 6 (2016). "It is causation however, and not just temporal proximity per se, that is vital to the employee's case." *Superior Linen*, 10 OCAHO no. 1180 at 8 (*citing Sodhi v. Maricopa Cnty. Special Health Care Dist.*, 10 OCAHO no. 1127, 89 (2008); *Porter v. Cal. Dep't of Corrs*., 419 F.3d 885, 895 (9th Cir. 2005)). Where, as here, there is no indication that any supervisor was aware of Complainant's desire to file a complaint, Complainant has not established a prima facie case of retaliation.

As such, Respondent's Motion for Summary Decision related to Complainant's retaliation claim is GRANTED. Complainant's claim that Respondent retaliated against him in violation of § 1324b(a)(5) is DISMISSED.

V. CONCLUSION

Complainant did not establish a prima facie claim for discriminatory discharge. Complainant did not establish a prima facie claim for retaliation. Respondent's Motion for Summary Decision is GRANTED. Complainant's cross-motion for summary decision is DENIED. Complainant's claims are DISMISSED.

VI. FINDINGS OF FACT

1. Armando Huberth Crespo is a United States citizen.

2. FAMSA, Inc. is a retail chain that specializes in selling household items in retail stores in Texas and Illinois.

3. FAMSA, Inc. first hired Armando Huberth Crespo on or about August 2008 to work as a salesperson in a store in California.

4. Armando Huberth Crespo subsequently worked in stores in Nevada, Illinois, and Texas.

5. Armando Huberth Crespo was terminated from FAMSA, Inc.'s Dallas, Texas store on June 22, 2017.

VII. CONCLUSIONS OF LAW

1. All conditions precedent to the institution of this proceeding have been satisfied.

2. To establish a prima facie discharge case under the traditional formulation, Complainant must show that he is a member of a protected class, was qualified for the position held, was discharged, and was replaced by a person not in Complainant's protected class. *Singh v. Shoney's, Inc.*, 64 F.3d 217, 219 (5th Cir. 1995).

3. Armando Huberth Crespo is a protected individual within the meaning of 8 U.S.C. § 1324b(a)(3)(A).

4. FAMSA, Inc. is an entity within the meaning of 8 U.S.C. § 1324b(a)(l).

5. Armando Huberth Crespo was qualified for a position as a salesperson with FAMSA, Inc.

6. Armando Huberth Crespo suffered an adverse employment action when FAMSA, Inc. terminated him on June 22, 2017.

7. In order to establish an inference of discrimination based on disparate treatment of similarly situated individuals, the employee must show that the potential comparators are similarly situated in all material respects. *Lee v. Kansas City Southern Ry. Co.*, 574 F.3d 252, 259–60 (5th Cir. 2009); *Little v. Republic Ref. Co*., 924 F.2d 93, 97 (5th Cir. 1991).

8. Armando Huberth Crespo did not establish a prima facie claim for discriminatory discharge under § 1324b because he did not provide evidence that FAMSA, Inc. treated him differently than similarly situated individuals outside of his protected class. *Okoye v. Univ. of Tex. Houston Health Sci. Ctr*, 245 F.3d 507, 512 (5th Cir. 2001).

9. In order to establish a prima facie case of retaliation, an employee must present competent evidence that: 1) the individual engaged in conduct protected by § 1324b, 2) the employer was aware of the protected conduct, 3) the individual suffered an adverse employment action, and 4) there was a causal connection between the protected activity and the adverse employment action. *Shortt v. Dick Clark's AB Theatre, LLC*, 10 OCAHO no. 1130, 6 (2009).

10. Armando Huberth Crespo did not establish a prima facie claim for retaliation because he did not meet his burden of proof to show that FAMSA, Inc. was aware that he was going to file a complaint for violations of 8 U.S.C. § 1324b. *Rainwater v. Doctor's Hospice of Ga., Inc.*, 12 OCAHO no. 1300, 17 (2017).

11. Filing a complaint with the Equal Employment Opportunity Commission is not a protected activity under § 1324b(a)(5). 8 U.S.C. § 1324b(a)(5); *Yohan v. Cent. State Hosp.*, 4 OCAHO no. 593, 13, 21–22 (1994).

12. There is no genuine issue of material fact and FAMSA, Inc. is entitled to summary decision as a matter of law.

To the extent that any statement of fact is deemed to be a conclusion of law or any conclusion of law is deemed to be a statement of fact, the same is so denominated as if set forth as such.

SO ORDERED.

Dated and entered on December 18, 2019.

_____

Jean C. King
Chief Administrative Law Judge

Appeal Information

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order files a timely petition for review of that Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of such Order. Such a petition must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.