

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-1795

JAMEL ELLERBEE,

Petitioner,

v.

ANNETT HOLDINGS, INC., d/b/a TMC Transportation; UNITED STATES
DEPARTMENT OF LABOR,

Respondents.

On Petition for Review of an Order of the Department of Labor. (2019-0059; 2019-STA-00011)

Submitted: December 17, 2019

Decided: December 19, 2019

Before KING, FLOYD, and HARRIS, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Jamel Ellerbee, Appellant Pro Se. Alyssa C. George, UNITED STATES DEPARTMENT OF LABOR, Washington, D.C.; Matthew Christopher Burke, Dana Hefter Hoffman, YOUNG MOORE & HENDERSON, PA, Raleigh, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jamel Ellerbee petitions for review of an order of the Department of Labor's (DOL) Administrative Review Board (ARB) dismissing as untimely his petition for review of the Administrative Law Judge's (ALJ) decision dismissing his complaint alleging violations of the Surface Transportation Assistance Act of 1982 (STAA), *see* 49 U.S.C. § 31105 (2012). Initially, Ellerbee has forfeited our review of the ARB's determination that his petition for review of the ALJ's decision was untimely. *See Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014) ("The informal brief is an important document; under Fourth Circuit rules, our review is limited to issues preserved in that brief"); *United States v. Copeland*, 707 F.3d 522, 530 (4th Cir. 2013) (recognizing that this Court generally does not consider arguments newly raised in reply). And, because Ellerbee failed to timely petition the ARB for review, we lack authority to exercise judicial review over the ALJ's decision. *See* 49 U.S.C. § 31105(d) (requiring STAA judicial review to conform with Administrative Procedure Act (APA)); 29 C.F.R. §§ 1978.109(e), 1978.110(a), (b) (2019); *see also Darby v. Cisneros*, 509 U.S. 137, 147, 152-53 (1993) (recognizing circumstances under which regulation may establish intra-agency appeal as prerequisite to judicial review under APA).

Accordingly, we deny the petition for review. We grant Ellerbee's motions to submit on the briefs and to amend the record. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED