



In the Matter of:

VETERANS CANTEEN SERVICE

With respect to an employee complaint

**filed by Paul L. Miller concerning work
performed on the renovation of the
concession/cafeteria property at the
Veterans Administration facility in
Northport, New York**

ARB CASE NO. 97-044

(Formerly ARB Case No. 96-115)

DATE: February 28, 1997

BEFORE: THE ADMINISTRATIVE REVIEW BOARD¹

FINAL DECISION AND ORDER

This matter is before the Administrative Review Board pursuant to the Davis-Bacon Act, as amended (DBA), 40 U.S.C. § 276a *et seq.* and the regulations at 29 C.F.R. Parts 5 and 7. Paul L. Miller seeks reconsideration of the Board's October 25, 1996 Final Decision and Order in this case. We deny the request. Miller petitioned for review of the letter of the Deputy Director, Office of Enforcement Policy, Wage and Hour Division (Final Determination), declining to pursue enforcement action on behalf of Miller concerning work he performed in 1993 under a contract for renovation of the canteen area at a Veterans Administration Hospital. Noting that a decision whether to enforce the DBA is committed to the discretion of the Wage and Hour Administrator, this Board declined to second guess the Administrator and denied the petition for review.

Miller seeks reconsideration of the Board's Final Decision on the ground that the Wage and Hour Final Determination was contrary to the regulation at 29 C.F.R. § 5.5(b)(3). That regulation authorizes government agencies, on their own action or pursuant to a written request of the Department of Labor, to cross-withhold funds under one contract because of the contractor's DBA violations on a different contract. The Department of Labor made no such cross-withholding request in Miller's case.

¹ On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996). Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Administrative Review Board now issues final agency decisions. Final procedural revisions to the regulations implementing this reorganization were also promulgated on that date. 61 Fed. Reg. 19982

The availability of cross-withholding does not alter our earlier ruling that we will not second guess the Administrator's reasonable decision not to enforce the DBA in this case. Accordingly, the request for reconsideration is **DENIED**.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member

JOYCE D. MILLER

Alternate Member