

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 11 August 2009**

**CASE NO.: 2009-LCA-6**

**IN THE MATTER OF:**

**ADMINISTRATOR, WAGE AND HOUR DIVISION,  
Prosecuting Party**

**v.**

**GASTROINTESTINAL SPECIALIST, PC,  
Respondent**

**CONSENT FINDINGS AND ORDER**

Pursuant to 29 C.F.R. § 18.9 (1992), the parties to this action, prosecuting party, Administrator, Wage and Hour Division (“Administrator”) and Respondent, Gastrointestinal Specialists, PC, have negotiated and executed these Consent Findings and Order. These Consent Findings and Order constitute a full and final resolution of this action and of all issues raised by the Administrator’s Determination Letter issued to Gastrointestinal Specialists, PC on November 20, 2008.

**Jurisdiction and Procedural History**

1. This action arises under the Immigration and Nationality Act of 1952, P.L. 82-414, 66 Stat. 163, codified as amended at 8 U.S.C. § 1101, *et seq.* (“INA”), as amended by the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978, the Miscellaneous Technical Immigration and Naturalization Amendments of 1991, P.L. 102-232, 105 Stat. 1733 and the American Competitiveness and Workforce Improvement Act of 1998 (“ACWIA”), P.L. 105-277, 112 Stat. 2861-641. Jurisdiction over the hearing in this matter is vested in the Office of Administrative Law Judges by INA § 212(n)(2), 20 C.F.R. §§ 655.820-840.

2. The issues resolved by these Consent Findings and Order were identified initially during an investigation conducted by Wage-Hour from June 10, 2008 through September 7, 2008.

3. On November 20, 2008, Wage and Hour issued to Gastrointestinal Specialists, PC a Determination Letter identifying alleged violations of the H-1B provisions of the INA.

4. Within the time period provided by 20 C.F.R. § 655.820, Gastrointestinal Specialists, PC filed a Request for Hearing with respect to the allegations of violations set forth in the Determination Letter.

### **General Provisions**

1. These Consent Findings and Order disposing of this proceeding shall have the same force and effect as an Order made after a full hearing.

2. The entire record forming the basis on which the Order is entered shall consist of the Determination Letter, and these agreements and consents.

3. The parties to these Consent Findings and Order hereby waive all further procedural steps between themselves before the Administrative Law Judge.

4. These Consent Findings and Order shall become final immediately upon approval of the Administrative Law Judge. The effective date of these Consent Findings and Order shall be the date of approval by the Administrative Law Judge.

5. Furthermore, these Consent Findings and Order do not and are not intended to affect, resolve or waive any issues, disputes or claims as between Gastrointestinal Specialists PC and Dr. Abhinandana Anantharaju other than those expressly resolved herein.

### **Specific Provisions**

1. The Administrator hereby amends the Determination Letter issued to Respondent dated November 20, 2008, to restate the back wages owed to \$36,000.01 plus interest, which shall be calculated using the monthly Federal short-term rate determined under 26 U.S.C. §662i(b)(3) plus three percentage points since March 2008, when the wages became due.

2. The Administrator calculated the interest in accordance with prior H-1B precedent. *See Mao v. Nasser Eng 'g and Computer Serv.*, ARB No. 06-121, slip. Op. at 11 (Nov. 26, 2008); *Innawalli v. American Info. Tech. Corp.*, ARB No. 04-165, slip op. at 8 (Sept. 29, 2006); *Amtel Group of F/a., Inc. v. Yongmahapakorn*, ARB No. 04-087, slip op. at 12-13 (Sept. 29, 2006) relying on *Doyle v. Hydro Nuclear Serv.*, ARB Nos. 99-041, 99-042, 00-012; ALJ No. 89-ERA-22, slip op. at 18-21 (May 17, 2000).

3. The pre-judgment interest calculation was performed using the monthly applicable federal rate (short-term rate) beginning March 2008 through July 2009 plus three percentage points. The accumulated interest through July 31, 2009 is \$2,402.56.

4. The Administrator revised its interest calculation after the Complainant questioned the basis for the Administrator's initial calculation.

5. As a result, Gastrointestinal Specialists, P.C. will pay \$38,402.57 (which includes \$2,402.56 interest) in back wages in accordance with the Determination Letter, as amended, by paying Complainant the full amount within 30 days of the Court's approval of these Consent Findings.

6. Gastrointestinal Specialists, P.C. withdraws its Request for Hearing filed in this matter, and consents to the affirmation of the matters set forth in the Determination Letter, as amended, issued by the Administrator on November 20, 2008.

### **Reporting and Enforcement**

1. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of these Consent Findings and Order, is retained by the Office of Administrative Law Judges.

2. Enforcement proceedings for violation of these Consent Findings and Order may be initiated at any time upon filing with the Administrative Law Judge a motion for an Order of enforcement and sanctions.

3. Each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding including, but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

4. Gastrointestinal Specialists, PC shall comply with 20 C.F.R. § 655.73 1(c) in the future.

5. These Consent Findings and Order shall constitute the final Administrative Order in this case.

**So ORDERED** this 11<sup>th</sup> day of August, 2009, at Covington, Louisiana..

A

**PATRICK M. ROSENOW**  
**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 thirty (30) calendar days of the date of issuance of the administrative law judge’s decision. *See* 20 C.F.R. § 655.845(a). The Board’s address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 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 the Petition with the Board, you must serve it on all parties as well as the administrative law judge. *See* 20 C.F.R. § 655.845(a).

If no Petition is timely filed, then the administrative law judge’s decision becomes the final order of the Secretary of Labor. Even if a Petition is timely filed, the administrative law judge’s decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 655.840(a).