U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 19 July 2012

CASE NO.: 2012-LCA-00048

In the Matter of:

MAHESH V. BORDAWEKAR,
Prosecuting Party,

vs.

SEMAFOR TECHNOLOGIES, LLC,
Respondent.

DECISION AND ORDER
DISMISSING CLAIM WITHOUT PREJUDICE

This is a request for information that Prosecuting Party filed under the Freedom of Information Act. It relates to the Wage & Hour Administrator's Determination, dated May 18, 2012, that Respondent failed to pay certain wages required under the H-1B visa program. As one of the underpaid workers, Prosecuting Party is a party-in-interest on that claim. When he received a service copy of the Administrator's Determination, it appears that three enclosures that should have been included were missing. He filed a FOIA request for the three exhibits. The FOIA request does not ask for a hearing on the merits or in any way object to the Administrator's Determination.

On May 29, 2012, Prosecuting Party delivered a copy of his FOIA request to the Office of Administrative Law Judges. This Office assigned it a case number as a Labor Condition Application matter. *See* OALJ Case No. 2012-LCA-41. Administrative Law Judge Henley reviewed Prosecuting Party's request. He determined it was not a request for hearing and that no party had requested a hearing on the Administrator's Determination. Accordingly, on June 11, 2012, he dismissed the matter without prejudice. In a footnote, Judge Henley suggested that Prosecuting Party might wish to consider sending his FOIA request to the Wage & Hour Division in Savannah, Georgia.

It appears that Prosecuting Party took Judge Henley's suggestion. On June 27, 2012, Wage & Hour's Atlanta office wrote to Prosecuting Party. It acknowledged receipt of his FOIA request on June 21, 2012, stated that it would respond within 30 days, and assured Prosecuting Party that his request was being processed "as expeditiously as possible."

It appears that Prosecuting Party provided OALJ and other Department of Labor entities with a second copy of his FOIA request at the time he took Judge Henley's suggestion and sent a copy to Wage & Hour in Georgia. Curiously, OALJ opened yet another Labor Condition Application

case and assigned it a new number, OALJ No. 2012-LCA-48. That is the matter presently before me.

This matter is identical to the matter that Judge Henley decided last month. Judge Henley's decision is *res judicata*. Even were I to review the FOIA request independently, I would reach the same result. This Office's jurisdiction in Labor Condition Application cases is invoked when a party requests a hearing. *See* 20 C.F.R. §655.820. No party has requested a hearing. Therefore, this Office lacks jurisdiction to review the Administrator's Determination, and the matter must be dismissed.

Order

This matter is DISMISSED without prejudice for lack of jurisdiction.

SO ORDERED.

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STEVEN B. BERLIN
Administrative Law Judge