



Issue Date: 19 April 2016

CASE NO.: 2015-LCA-00024

In the Matter of:

ADMINISTRATOR, WAGE & HOUR DIVISION,
Prosecuting Party,

v.

NAPLES AIR CENTER, INC.,
Respondent.

ORDER APPROVING CONSENT FINDINGS

This action arises under the Immigration and Naturalization Act of 1952, P.L. 82-414, 66 Stat. 163, codified as amended at 8 U.S.C. § 1101 *et seq.* (“the 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 Section 212(n)(2), 20 C.F.R. §§ 655.820-840. The hearing in this matter is scheduled for April 28, 2016 in either Fort Meyers or Naples, Florida.

Pursuant to 29 C.F.R. § 18.9 (1992), the parties to this action, Prosecuting Party, Administrator, Wage and Hour Division (“Administrator”), and Respondent Naples Air Center, Inc. (“Respondent”), have negotiated and executed Consent Findings in a document titled “Consent Findings And Order”.

FINDINGS

Based on the consent findings submitted by the parties, I find that:

1. On August 6, 2015, the Administrator issued to Respondent a Determination Letter identifying alleged violations of the H-1B provisions of the INA including failure to pay wages as required by 20 C.F.R. § 655.731.
2. Within the time period provided by 20 C.F.R. § 655.820, Respondent filed a Request for Hearing with respect to the allegations of violations set forth in the Determination Letter.

3. On the basis of the August 6, 2015 Determination Letter which the Administrator herein amends pursuant to the negotiated Consent Findings, Respondent owes gross back wages in the total amount of \$25,264.70, with \$17,806.70 in back wages due to Lawrence Mills and \$7,458.00 due to James Humble.
4. In addition to the gross back wages owed, and pursuant to the Federal Insurance Contributions Act, 29 U.S.C. 21 (“FICA”) and 26 C.F.R. 31.3111-4, Respondent shall remain responsible for the payment of employer’s share of any FICA contributions arising from or related to the back wages paid pursuant to this Order.
5. Respondent has withdrawn their exception to administrative determination and agrees to pay a total of \$25,264.70 and acknowledges their responsibility for the employer’s share of the FICA arising from back wages paid hereunder.
6. The parties have agreed that this obligation shall be paid in twelve (12) monthly installment payments.
7. The issues resolved by this Order were identified initially during an investigation conducted by the Wage and Hour Division.
8. The entire record forming the basis on which the Order is entered shall consist of the August 6, 2015 Determination Letter and attachments thereto and the “Consent Findings and Order” submitted by the parties.
9. All further procedural steps between themselves before the Administrative Law Judge have been waived.
10. Any rights to challenge or contest the validity of these Consent Findings and the Order based on the findings have been waived.
11. All violations alleged in the Determination Letter issued by the Administrator are fully resolved with regard to both parties.

ORDER

It is hereby ORDERED that

1. Respondent shall pay to the Administrator gross back wages in the total amount of \$25,264.70, with \$17,806.70 in back wages due to Lawrence Mills and \$7,458.00 due to James Humble.
 - a. Respondent shall discharge this obligation in in twelve (12) monthly installment payments.
 - b. The first installment payment shall be due within 30 days of the Administrative Law Judge’s entry of these Consent Findings and Order, with each subsequent payment due on a monthly basis thereafter.

- c. This obligation is subject to the assessment of interest, administrative cost charges and penalties in accordance with the Debt Collection Improvement Act of 1996 and departmental policies. Interest will be assessed at the Treasury Tax and loan account rate on any principal that becomes delinquent. This rate is currently 1.0%. Administrative cost charges will be assessed to help defray the Government's cost.
- d. Payments shall be made payable to "Wage and Hour Division--Labor" and the amount of each of the 12 payments shall be as follows:

<u>PAYMENT</u> <u>NO.</u>	<u>PRINCIPAL</u> <u>DUE</u>	<u>INTEREST</u> <u>DUE</u>	<u>TOTAL DUE</u>
1	\$2,105.39	\$6.22	\$2,111.61
2	\$2,105.39	\$4.46	\$2,109.85
3	\$2,105.39	\$2.71	\$2,108.10
4	\$2,105.39	\$60.31	\$2,165.70
5	\$2,105.39	\$14.04	\$2,119.43
6	\$2,105.39	\$12.28	\$2,117.67
7	\$2,105.39	\$10.53	\$2,115.92
8	\$2,105.39	\$8.77	\$2,114.16
9	\$2,105.39	\$7.02	\$2,112.41
10	\$2,105.39	\$5.26	\$2,110.65
11	\$2,105.39	\$3.51	\$2,108.90
12	\$2,105.39	\$1.75	\$2,107.16
<u>Totals:</u>	\$25,264.70	\$136.86	\$25,401.56

- e. The payments shall be sent to the following address:
Wage and Hour Division
Miami District Office
Sunset Center
10300 Southwest 72nd St., Suite 255
Miami, FL 33173-3038

- 2. Respondent shall make timely payments of employer's share of FICA contributions arising from or related to the back wages paid pursuant to this Order.
- 3. The Administrator shall distribute the proceeds of the monthly checks or money orders, less deductions for federal income taxes and employee contributions to FICA, as required by law, to Lawrence Mills and James Humble, or to their personal representatives

- a. Any amounts not so distributed by the Administrator within the period of three years after date of these Findings, because of inability to locate the proper persons or because of such persons' refusals to accept such sums, shall be deposited into the Treasury of the United States as miscellaneous receipts.
 - b. Any inability of the Administrator to distribute the above wages shall not relieve Respondent of its responsibility to pay the employer's share of FICA arising from the payment of these back wages to the Administrator.
4. Should Respondent fail to timely make any of the payments specified herein, the entire remaining unpaid balance shall become due and payable immediately, with no further notice or demand required. Respondent may prepay the installment agreement in part or in full at any time without penalty.
5. This Order shall have the same force and effect as an Order made after a full hearing.
6. This Order constitutes a full and final resolution of this action and of all issues raised by the Administrator's Determination Letter issued to Respondent on August 6, 2015.
7. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of this Order is retained by the Office of Administrative Law Judges.
8. Enforcement proceedings for violation of this Order may be initiated at any time upon the filing with the Administrative Law Judge a motion for an Order of enforcement and sanctions.
9. 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.
10. This Order shall become final immediately upon approval of the Administrative Law Judge. The effective date of this Order shall be the date of approval by the Administrative Law Judge. Respondent withdraws the Request for Hearing it filed in this matter.
11. The hearing in this matter, presently scheduled for April 28, 2016 is vacated.

SO ORDERED.

WILLIAM J. KING
Administrative Law Judge