



**Issue Date: 11 April 2017**

*In the Matter of:*

**INDUSTRIAL ELECTRONICS, LLC**

*Claimant,*

v.

**Case No.: 2016-LCA-00024**

**INDUSTRIAL CONTROL SOLUTIONS**

*Respondent.*

**Yuriy Oskya, Non attorney**

*For Complainant*

**James N. Martin, Jr., Esquire**

*For Respondent*

**Donna Sonner, Esquire**

*For Department of Labor, Party in Interest*

## **DECISION AND ORDER**

### ***CLAIM DISMISSED FOR LACK OF STANDING***

This case was scheduled for hearing December 21, 2016 in Louisville Kentucky pursuant to 20 C.F.R. § 655.820 et seq., regarding the H-1B provisions of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101(a)(15)(H)(i)(B) and 1182(n) and in accordance with 29 C.F.R. Part 18 of the Rules of Practice and Procedure of the Office of Administrative Law Judges, U.S. Department of Labor. On November 29, 2016 I entered an Order to Show Cause and an Order to cancel a hearing that was scheduled for December 21, 2016 in Louisville, Kentucky, due to lack of standing. 20 C.F.R. § 655.807.

The Respondent filed a Motion for Summary Decision on August 2, 2016, but in a series of orders, I held any response time in abeyance until I entered an Interim Order establishing a response date. Complainant, who is *pro se*, filed a response and Respondent filed a reply.<sup>1</sup> Although Complainant was initially represented by counsel, I granted counsel for Complainant's request to withdraw. I repeatedly advised Complainant to seek other counsel. On September 16, 2016, I held a telephone conference. Besides record counsel, Yuriy Oskya appeared and represented that he is principal of Complainant Industrial Electronics. Although Mr. Oskya stated on the record that he wished to withdraw the request for hearing, in a later email, he stated otherwise.

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<sup>1</sup> I corrected the caption in this case several times. I held a telephone conference August 19, 2016, when the parties appeared and the identities were discussed. I entered an Order to that effect on that date. Industrial Electronics is the Respondent in a companion case, 2016 LCA 00023, DOL v. Industrial Electronics.

After having been fully advised in this matter, I entered the following Order on November 29, 2016:

1. The Hearing December 21, 2016 is **CANCELLED**.
2. Complainant is again advised to seek legal counsel.
3. Complainant has to **JANUARY 24, 2017 TO SHOW CAUSE** why this case should not be dismissed due to lack of standing. 20 C.F.R. § 655.807.
4. A failure to respond may result in dismissal.

Thereafter, I held a hearing December 20 to December 21 in a companion case, 2016-LDA-00023 in Louisville. Mr. and Mrs. Oskya were present for the two day hearing. Also present, among others were Mr. Martin, attorney for Respondent, and Donna Sonner, Esquire, who represented the Department of Labor in that case. Because there may have been a problem with service of the Order to Show Cause, in an abundance of caution, I entered the following, extending the period to comment.

1. Mr. and Mrs. Oskya shall be added to the service sheet.
2. Donna Sonner, Esquire, for the Solicitor of Labor, Department of Labor, shall be added to the service sheet as a party in interest.
3. OALJ staff shall enter copies of all emails from Mr. and Mrs. Oskya regarding this case into the docket.
4. My November 29 Order to Show Cause shall be republished to all parties on the amended service sheet.
5. Mr. and Mrs. Oskya shall have until close of business Monday, April 3, 2017 to **SHOW CAUSE** why this case should not be dismissed due to lack of standing. 20 C.F.R. § 655.807.

#### **RESTATEMENT OF THE LAW RELATING TO JURISDICTION**

20 C.F.R. § 655.807 states:

No hearing shall be available from a decision by the Administrator declining to refer allegations addressed by this section to the Secretary, and none shall be available from a decision by the Secretary certifying or declining to certify that an investigation is warranted.

Further, there is a “presumption that agency decisions not to institute proceedings are unreviewable under 5 U.S.C. § 701(a)(2),” and Complainant must overcome this presumption as it applies to § 655.807. Complainant’s Request for Hearing filed on June 9, 2016 states:

[Complainant] appeals the determination that [INDEL] violated certain wage and hour laws.

Respondent argues that the Request for Hearing only addresses Complainant's own violations:

That Request for Hearing did not even mention [Respondent] Industrial Control Solutions, much less any allegation that Industrial Control Solutions violated federal wage and hour laws.

In its response to my Order to Comment and to the Department of Labor proffer of ALJ-1 and ALJ-2, Complainant admits that the Administrator reviewed the evidence set forth by the Respondent INDUSTRIAL ELECTRONICS RESPONSE TO ORDER FOR COMMENTS dated November 23, 2016 and declined to certify that an investigation is warranted. Complainant did not reply to the allegation that the Request for Hearing did not allege fraud or interference by Respondents.

I also note the allegation that Complainant "Industrial Electronics"

...does not have any financial pretensions to anyone but demands to investigate "Industrial Control Solutions" compliance to the law through court since Department of Labor according to their formal opinion found nothing.

Constitutes a tacit admission that the allegations in this matter do not comply with 20 C.F.R. § 655.807. See Complainant's Response to the Respondent Motion for Summary Decision.

#### **COMPLAINANT'S POSITION RE 20 C.F.R. § 655.807**

Complainant argues that it asked the Department of Labor not an "aggrieved party" pursuant to 20 CFR 655.807. However, in response it details the language of the regulation and submits that it is an aggrieved party and states, in great detail, how Department of Labor should have investigated and deliberated. Complainant restates that it has submitted documentary evidence of violation of H1B regulations by Respondent.

Complainant brings certain state claims and certain inequities to my attention. I do not have the capacity to review pendent state claims or exert equity jurisdiction under the Statute.

## ORDER

After having been fully advised in this matter, since the Administrator has declined to refer allegations addressed by this section to the Secretary, Complainant does not have standing to proceed and I do not have jurisdiction.

Therefore, the claim is **DISMISSED**.

**DANIEL F. SOLOMON**  
**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 calendar days of the date of issuance of the administrative law judge’s decision. *See* 20 C.F.R. § 655.76(a). The Board’s address is:

Administrative Review Board  
U.S. Department of Labor  
Room S-5220  
200 Constitution Ave, NW  
Washington, D.C. 20210

At the time you file the Petition with the Board, you must serve it on all parties to the case as well as the administrative law judge. 20 C.F.R. § 655.76(a).

No particular form is prescribed for the Petition, however, any such petition shall:

- (1) Be dated;
- (2) Be typewritten or legibly written;
- (3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;
- (4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;
- (5) Be signed by the party filing the petition or by an authorized representative of such party;
- (6) Include the address at which such party or authorized representative desires to receive

further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Board in determining whether review is warranted.

20 C.F.R. § 655.76(b). If the Board determines that it will review the decision and order, it will issue a notice specifying (1) The issue or issues to be reviewed; (2) The form in which submissions shall be made by the parties (e.g., briefs); and (3) The time within which such submissions shall be made. When filing any document with the Board, the party must file an original and two copies of the document. 20 C.F.R. § 655.76(e).