

U.S. Department of Labor

Office of Administrative Law Judges
2 Executive Campus, Suite 450
Cherry Hill, NJ 08002

(856) 486-3800
(856) 486-3806 (FAX)



Issue Date: 14 June 2016

Case No.: 2016-LCA-00008

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION
Prosecuting Party

v.

SQL TECHNOLOGIES, INC.
Respondent

DECISION AND ORDER DISMISSING CASE AND CANCELING HEARING

This matter comes before the United States Department of Labor, Office of Administrative Law Judges (“OALJ”) under the Immigration and Nationality Act (“INA”) H-1B visa program, 8 U.S.C. § 1101(a)(15)(H)(i)(b), § 1182(n)(1), § 1184(i)(1) and the applicable regulations found at 20 C.F.R. Part 655, Subparts H and I (2014).

By letter dated December 2, 2015, Ahmed Omari, CEO, SQL Technologies, Inc. (“Respondent”) was informed that the Administrator, Wage and Hour Division (“Administrator” or “Prosecuting Party”) (1) determined Respondent had failed to pay wages as required in violation of the INA and (2) assessed back wages owed in the amount of \$15,067.20 to one H-1B non-immigrant worker. Respondent disagreed with the Administrator’s determination and requested a hearing before the OALJ in a letter dated December 15, 2015. The matter was then assigned to me on or about December 29, 2015.

An Initial Pre-Hearing Order and Notice of Hearing (“Hearing Order”) was issued to the parties on January 6, 2016, providing a proceeding schedule and notice of procedural requirements. The Hearing Order scheduled a telephonic prehearing conference for 10:00 a.m., Thursday, May 19, 2016. The Hearing Order scheduled a hearing in this matter on Thursday, June 23, 2016 in New York, New York.

In the December 15, 2015 hearing request, Respondent noted that it no longer had any address within the United States and requested that “a copy of any communication” be sent to it “in PDF to our email address: aomari@sqltechnologies.us”. This office therefore emailed the Hearing Order to Respondent on January 6, 2016, using the email address provided in Respondent’s hearing request and received electronic confirmation of its receipt on January 7, 2016.

By letter dated April 21, 2016, counsel for the Administrator requested that a status conference be convened in this matter to determine if Respondent “intends to participate in this case or withdraw its appeal,” noting that Respondent had refused to participate in the initial conference and had failed to provide its initial disclosures as directed in the Hearing Order. The Administrator’s request for a status conference was not granted.

The prehearing conference was convened as scheduled on May 19, 2016. Present was counsel for the Administrator; Respondent did not appear as directed in the Hearing Order.

An Order to Show Cause as to Why This Matter Should Not be Dismissed (“Order to Show Cause”) was issued on May 20, 2016.¹ The Order to Show Cause noted that the Hearing Order cites to 29 C.F.R. Sections 18.12(b), 18.35(c), 18.57 and 18.87 of the Rules of Practice and Procedure before the OALJ, and provides that failure to comply with its provisions “may result in the imposition of sanctions including but not limited to the following: the exclusion of evidence, **the dismissal of the claim**, the entry of a default judgment, or the removal of the offending representative from the case.” *See* Order to Show Cause at 2 (emphasis in original); *see also* Hearing Order, Section 16.

The Order to Show Cause directed that, within ten (10) days of receipt of the Order to Show Cause, Respondent must show cause as to why this matter should not be dismissed before the OALJ for his failure to comply with the Hearing Order. The Order to Show Cause was emailed to Respondent on May 20, 2016. As of the date of this Order, Respondent has not submitted any response to the Order to Show Cause.

Respondent has failed to comply with the directives as set forth in the Hearing Order of January 6, 2016 and the Order to Show Cause of May 20, 2016. Respondent did not produce initial disclosures, did not participate in an initial conference with the Administrator, and did not appear at the prehearing conference.² Moreover, Respondent has not submitted any document to explain his failure to comply with the directives as outlined in the orders in this case. Accordingly, this matter is hereby **DISMISSED**. The hearing previously scheduled for June 23, 2016 is hereby **CANCELED**. The Administrator’s determination as set forth in the letter dated December 2, 2015, that Respondent failed to pay wages as required in violation of the INA and owes back wages in the amount of \$15,067.20 to one H-1B non-immigrant worker, shall become the final determination in this matter.³

¹ This office emailed the Order to Show Cause to Respondent’s email address as listed above. This office received confirmation that the email was sent, but did not receive a “read receipt.” As noted above, this office has no current mailing address for Respondent.

² In his letter dated April 21, 2016, counsel for the Administrator noted his repeated requests to Respondent to comply with his obligations in this case. He stated that Respondent suggested that he may not want to participate in this case anymore and could not provide any additional “help,” and has since stopped responding to all email communication.

³ *See* 20 C.F.R. § 655.815(c)(3) (the determination of the Administrator shall become final and not appealable in absence of request for timely hearing); 20 C.F.R. § 655.820(a) (“If such a request for an administrative hearing is timely filed, the Administrator's determination shall be inoperative unless and until the case is dismissed or the Administrative Law Judge issues an order affirming the decision”); *see also* 29 C.F.R. § 18.57(b)(1)(v) (stating that an administrative law judge may dismiss the proceeding in whole or in part for failure to comply with a judge’s order); 29 C.F.R. § 18.12(b)(7) (stating that an administrative law judge has the authority to terminate proceedings through dismissal or remand when not inconsistent with statute, regulation, or executive order).

SO ORDERED.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill New Jersey

NOTICE OF APPEAL RIGHTS: Any interested party desiring review of this Decision and Order may file a petition for review with the Administrative Review Board (Board) pursuant to 20 C.F.R. § 655.845.

The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. If you e-File your petition only one copy need be uploaded.

If no petition for review is filed, this Decision and Order becomes the final order of the Secretary of Labor. *See* 20 C.F.R. § 655.840(a). If a petition for review is timely filed, this Decision and Order shall be inoperative unless and until the Board issues an order affirming it, or, unless and until 30 calendar days have passed after the Board's receipt of the petition and the Board has not issued notice to the parties that it will review this Decision and Order.