



Issue Date: 17 April 2017

OALJ Case No.: 2017-LCA-00010
WHD Case No.: 1643036

In the Matter of

USHA KIRAN REDDY DANDA,¹
Complainant/ Interested Party,

v.

RITES LLC,
Respondent.

**ORDER GRANTING REQUEST
TO WITHDRAW HEARING REQUEST**

This proceeding arises under the H-1B non-immigrant worker program of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(15)(H)(i)(b), 1182(n), and the implementing regulations at 20 C.F.R. Part 655, subparts H and I.

BACKGROUND

On March 9, 2017, Usha Kiran Reddy Danda sent a facsimile transmission to the Office of Administrative Law Judges (“OALJ”) requesting a hearing on the Administrator’s Determination issued by the Wage and Hour Division’s (“WHD”) Richmond, Virginia district office on March 2, 2017 on WHD Case No. 1643036.

During processing of Mr. Danda’s request, it became evident that although Mr. Danda was the H-1B worker whose complaint caused the WHD to initiate an investigation, the WHD Administrator’s March 2, 2017 determination related only to 26 other H-1B workers of Rites LLC and did not address Mr. Danda’s own claim for back wages. It further became evident the WHD intended to issue a second determination letter specific to Mr. Danda’s claim.

¹ Because the procedural posture of this matter, it has not been clear whether the Complainant or the Administrator would be considered the prosecuting party. See 20 C.F.R. §655.820(b)(1) and (2). Because Mr. Danda is withdrawing his hearing request, the proper caption of the case need not be resolved.

On March 17, 2017, the undersigned issued a Notice of Docketing and Order to Show Cause Why This Matter Should Not Be Held in Abeyance in view of the information provided to OALJ that a separate Administrator's determination would be forthcoming addressing Mr. Danda's case.

On March 23, 2017, the Richmond, Virginia WHD issued a second Administrator's Determination on WHD Case No. 1643036 finding that Rites, LLC owes back wages under the LCA regulations to Mr. Danda in the amount of \$134,029.86.

By letter dated March 30, 2017, Mr. Danda filed a letter with the undersigned stating that he was in receipt of the Administrator's March 23, 2017 determination letter. Mr. Danda stated: "I agree with the findings and the determination letter. For this reason, I would request you to allow me to withdraw my earlier appeal for a hearing in this case."

Because it was not clear whether Mr. Danda's letter requesting to withdraw his hearing was served on the other parties, a member of my staff emailed the attorneys for the WHD Administrator and for Rites, LLC to provide a copy of Mr. Danda's withdrawal request. The attorney for the Administrator replied on April 10, 2017, stating that the Administrator did "not intend to object or respond to Mr. Danda's March 30, 2017 letter." The attorney for Rites, LLC replied on April 14, 2017 stating that "Rites does not intend to file any response to Mr. Danda's request to withdraw his request for a hearing."

DISCUSSION

The LCA regulation at 20 C.F.R. § 655.825(a) provides that "[e]xcept as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the 'Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges' established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart." The LCA regulations do not specifically address a request for withdrawal of a hearing request. Accordingly, the regulation at 29 C.F.R. § 18.70(c) applies. That regulation states that "[a] party may move to dismiss part or all of the matter for reasons recognized under controlling law, such as lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted, or untimeliness. If the opposing party fails to respond, the judge may consider the motion unopposed."

Here, Mr. Danda appears to have filed the hearing request on the Administrator's March 2, 2017 determination because he was not awarded back wages in that determination on his LCA complaint. It appears that he requested withdrawal of his request for a hearing on the March 2, 2017 Administrator's determination because the Administrator's March 23, 2017 determination awarded the back wages Mr. Danda believes he is owed.

In view of the foregoing, I find good cause for permitting Mr. Danda to withdraw his March 9, 2017 hearing request on the Administrator's determination issued on March 2, 2017.

In this regard, I note that Mr. Danda's withdrawal of his hearing request is based on the fact that the Administrator's March 23, 2017 determination was in his favor, and that Rites LLC has requested a hearing on the Administrator's determination.² Accordingly, I direct that Mr. Danda's withdrawal of his March 9, 2017 hearing request be approved without prejudice as to his own back wages complaint. The dismissal, however, is with prejudice as to the back pay awards to the other H-1B employees.³

ORDER

IT IS ORDERED that the above-captioned matter is **DISMISSED** without prejudice as to Mr. Danda's back wages complaint.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

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

² Rites LLC filed with OALJ a request for hearing on the Administrator's March 23, 2017 determination by letter dated April 4, 2017... Rite LLC's hearing request has been docketed as OALJ Case No. 2017-LCA-00011.

³ By letter dated March 21, 2017, the attorney for the Administrator filed a letter in this matter arguing that Mr. Danda did not have standing to appeal the Administrator's March 2, 2017 determination. In view of Mr. Danda's withdrawal of his hearing request on the March 2, 2017 determination, it is not necessary to rule on the question of his standing to request a hearing under 20 C.F.R. §655.820(b)(1) and (2).

(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.