



Issue Date: 07 June 2017

CASE NO.: 2017-LCA-2

In the Matter of:

DEEPAK MEHRA,  
*Pro Se* Plaintiff

v.

WEST VIRGINIA UNIVERSITY,  
Respondent

**DECISION AND ORDER DISMISSING COMPLAINT AS UNTIMELY**

This case arises under the Immigration Reform and Control Act of 1986 [hereinafter IRCA], as amended, codified at 8 U.S.C. §1101 *et seq.*, as implemented by the regulations at 20 C.F.R. Part 655. The complaint was filed on October 8, 2014. On October 4, 2016, the district director concluded that Respondent had not committed any violations. On October 19, 2016, Plaintiff requested that the matter be referred to the Office of Administrative Law Judges for a formal hearing.

On March 31, 2017, Respondent submitted a *Motion for Summary Judgment* in this claim.<sup>1</sup> On April 12, 2017, the undersigned issued an *Order to Show Cause*, extending Plaintiff's deadline to respond to Respondent's *Motion for Summary Judgment* and ordering Plaintiff to show cause why his complaint should not be dismissed as untimely. Plaintiff responded to the *Order to Show Cause* on April 26, 2017. After considering the arguments and evidence submitted by the parties, and the relevant applicable law, this decision follows.

**Summary of Pertinent Facts**

Plaintiff was employed in an H-1B status with Respondent from May 16, 2007 until May 15, 2013. While working for Respondent, Plaintiff complained that his wages had been improperly computed. Respondent, agreeing with Plaintiff, voluntarily paid him \$9,483.00 on March 30, 2012 for all owed back wages. Plaintiff became of a permanent resident of the United States on September 7, 2013.

---

<sup>1</sup>This Decision and Order does not address the merits of Respondent's *Motion for Summary Judgment*.

On April 16, 2014, Plaintiff emailed the Department of Labor Office of Inspector General regarding his payment dispute. It was addressed to:

The Department of Labor  
The Office of the Inspector General  
Francis Perkins Building, 200 Constitution Avenue  
NW, Room S-5502  
Washington, DC, 20210

On October 8, 2014, Plaintiff filed a “complaint regarding assessment/reassessment of prevailing wages” via an email<sup>2</sup> sent to the Department of Labor, addressed to:

The Secretary  
US Department of Labor  
Employment and Training Administration  
National Prevailing Wage and Help Desk Center  
1341-G-Street NW Suite 201  
Washington DC 20005-3142

The allegations raised in the complaint were that the prevailing wage determination was inaccurate because (1) Plaintiff’s Ph.D. should have qualified him for the “Level IV” wage as opposed to the “Level I” wage that he was actually assigned; and (2) that the Respondent should have compared Plaintiff’s wages to members of the faculty in Morgantown instead of limiting the comparison to the Potomac State College Campus.

Plaintiff’s emailed complaint of October 8, 2014, addressed to the Secretary was acknowledged via a letter dated October 24, 2014 by the U.S. Department of Labor Wage and Hour Division. On October 4, 2016, the district director concluded that Respondent had not committed any violations. On October 19, 2016, Plaintiff requested that the matter be referred to the Office of Administrative Law Judges for a formal hearing.

On March 31, 2017, Respondent submitted a *Motion for Summary Judgment* in this claim. On April 12, 2017, the undersigned issued an *Order to Show Cause* ordering Plaintiff to show cause why his complaint should not be dismissed as untimely. Plaintiff responded to the *Order to Show Cause* on April 26, 2017.

#### Applicable Law

The Immigration Reform and Control Act is a federal law that regulates the employment of foreign workers. It, *inter alia*, prohibits discrimination against job applicants and employees based on national origin or citizenship. Employers must pay wages to the H-1B nonimmigrant workers that are at least equal to the actual wage paid by the employer to other workers with similar experience and qualifications for the job in question, or the prevailing wage for the occupation in the area of intended employment – whichever is greater. While no particular

---

<sup>2</sup>The email addresses the complaint was sent to were [talktodol@dol.gov](mailto:talktodol@dol.gov), [etapagemaster@dol.gov](mailto:etapagemaster@dol.gov), and [flc.pwd@dol.gov](mailto:flc.pwd@dol.gov).

format of a complaint is required, it is to be submitted in writing to the Department of Labor Wage and Hour Division, or if submitted verbally, reduced to writing by the official in the Department of Labor Wage and Hour Division receiving it. 20 C.F.R. § 655.806(a)(1). The complaint may be submitted to any local Wage and Hour Division Office. 20 C.F.R. § 655.806(a)(6). Most importantly, the complaint must be filed

not later than 12 months after the latest date on which the alleged violation(s) were committed, which would be the date on which the employer allegedly failed to perform an action or fulfill a condition specified in the LCA, or the date on which the employer, through its action or inaction, allegedly demonstrated a misrepresentation of a material fact in the LCA.

20 C.F.R. § 655.806(a)(5).

For purposes of adjudicating these complaints, the *Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges* (hereafter Rules) governs with the exception of the Rules of Evidence contained in subpart B and the Federal Rule Evidence. 20 C.F.R. § 655.825(a) & (b); 29 C.F.R. Part 18, Subpart A. The Rules provide that the undersigned may consider summary judgment *sua sponte* after “identifying for the parties the material facts that may not be genuinely in dispute.” 29 C.F.R. § 18.72(f)(3). It is noted that the rules governing H-1B hearings do not have any specific provisions for dismissal of complaints for untimely filing. *See* 20 C.F.R. § 655.835; 29 C.F.R. Part 18 (2006).

#### Conclusions of Law

It is axiomatic that for an action to commence it must be properly and timely filed. This complaint should be dismissed as untimely unless it can be demonstrated that it was filed within one year of the latest potential violation. 20 C.F.R. § 655.806(a)(5). Plaintiff became of a permanent resident of the United States on September 7, 2013. From that point on he could no longer be employed under the auspices of an H-1B visa. Any violation of the IRCA or relating to his H-1B status that he could possibly allege would have to be filed with the Department of Labor Wage and Hour Division no later than September 8, 2014. His present complaint was filed on October 8, 2014, exceeding this deadline and making it untimely pursuant to 20 C.F.R. § 655.806(a)(5). The question presented in this case is whether Plaintiff’s emailing the Department of Labor’s Office of the Inspector General, prior to the filing deadline, is sufficient for *filing* purposes pursuant to the IRCA and 20 C.F.R. § 655.806(a)(5)?<sup>3</sup> Emphasis added. It is the opinion of the undersigned that it is not.

The regulations provide that a claim may be filed with the Department of Labor’s Wage and Hour Division; they do not provide that it can be filed with any Department of Labor office

---

<sup>3</sup>An auxiliary issue, not before the undersigned, is whether the Office of Inspector General – or any other component of the Department of Labor or federal government for that matter, has a *duty* to file the complaint on behalf of Plaintiff with the Wage and Hour Division? Emphasis added. Absent a specific regulation or statute, the Office of Inspector General or other component of the Department of Labor would have no duty to do so, but as a matter of comity could certainly forward a complaint to the correct office for filing or other action. Their failure to do so, however, does not abrogate Plaintiff’s responsibility to properly file his complaint.

such as the Office of the Inspector General. 20 C.F.R. § 655.806. It is reasonable that for a claim to be properly filed, it must be done so in accordance with the regulation and with the correct entity. Any complaints that were not properly filed with Wage and Hour are not relevant to 20 C.F.R. § 655.806(a)(5). It is also noted that the filing procedure for a claim provided by the regulations is extremely liberal and *pro se* friendly. Claims are not required to be in any particular format, can be verbal, and made to any Department of Labor Wage and Hour Division office. 20 C.F.R. § 655.806(a)(1) & (6).

Furthermore, the time requirement contained in 20 C.F.R. § 655.806(a)(5) is specific and not unduly burdensome. Unlike a court, which merely has an adjudicative function, the Department of Labor Wage and Hour Division has additionally a regulation-mandated requirement to timely investigate claims pursuant to the IRCA. 20 C.F.R. § 655.806.<sup>4</sup> In order to effectively complete this investigatory mission, claims have to be reported in a timely fashion.

In the present case, Plaintiff, in his response to the April 26, 2017, *Order to Show Cause*, asserts that the present claim before the undersigned is the one he submitted to the Department of Labor's Office of Inspector General on April 16, 2014. This is disingenuous at best. The complaint that the Hour and Wage Division received, investigated, and is before the undersigned was filed on October 8, 2014 as demonstrated by the correspondence between Plaintiff and the Department of Labor. Plaintiff addressed his October 8, 2014 to the Secretary of Labor; this emailed complaint addressed *to the Secretary* was acknowledged as such via a letter dated October 24, 2014 by the U.S. Department of Labor Wage and Hour Division. Emphasis added. Plaintiff's April 16, 2014, email to the Office of the Inspector General was merely addressed to the "Department of Labor." Just as Plaintiff's complaints to his employer fail to "file" a complaint with the Department of Labor Wage and Hour Division (*Ndiaye v. CVS Store No. 6081*, Case No. 2004-LCA-00036 (Sept. 10, 2004) (unpub.)), so too must his communications with government entities other than the Department of Labor's Wage and Hour Division. As the filing requirements of 20 C.F.R. § 655.806(a) are so lax and can be accomplished by even the most unsophisticated *pro se* litigant, requiring a complaint to be filed with the Department of Labor's Wage and Hour Division so as to allow them to timely investigate the matter is not unreasonable. It is additionally noted that, insofar as his own pleadings demonstrate that Plaintiff was aware of the alleged violations as early as 2012, it cannot be said that he is entitled to any equitable tolling. *See Gupta v. Sec'y United States Dep't of Labor*, 649 Fed. Appx. 119 (3rd Cir. 2016).

---

<sup>4</sup>The primary purpose of filing time limitations is to provide "a quick and remedy for an employee" who has suffered an adverse employment action. *See generally Dartey v. Zack Co. of Chicago*, 82-ERA-2 (ALJ Jan. 29, 1982), (prehearing order denying motion to dismiss), *adopted* (Sec'y Apr. 25, 1983).

Accordingly, the undersigned finds that the uncontroverted evidence overwhelmingly demonstrates, even when viewed in the light most favorable to Plaintiff, that as Plaintiff failed to file the present complaint that is before the undersigned until over a year after any potential violation of the IRCA could possibly be alleged, it must be dismissed pursuant to 20 C.F.R. § 655.806(a). As the undersigned's April 26, 2017 *Order to Show Cause* identified this potential resolution of the complaint to the parties, this Order to Dismiss is appropriate. 29 C.F.R. § 18.72(f)(3).

DREW A. SWANK  
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 (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](mailto: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.