

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 26 January 2017

Case No.: 2017-LCA-00003

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR,
Prosecuting Party

v.

COMPETENT SYSTEMS INCORPORATED,
Respondent.

DECISION AND ORDER APPROVING CONSENT FINDINGS

This case arises under the H-1B visa program of the Immigration and Nationality Act of 1952 (INA), 8 U.S.C. § 1101, et seq, as amended, and its implementing regulations found at 20 C.F.R. Part 655, Subparts H and I. The Parties successfully resolved the pending issues.

On January 17, 2017, the Parties jointly filed "Consent Findings" stating that they "have negotiated and executed these Consent Findings ...[for]full and final resolution of this action and of all issues raised by the Administrator's Determination Letter issued to Respondent on October 12, 2016" pursuant to 29 CFR §18.9 (b). The Parties agreed to the following in their Consent Findings:

JURISDICTION AND PROCEDURAL HISTORY

1. 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.

2. The issues resolved by these Consent Findings and Order were identified initially during an investigation conducted by the Wage and Hour Division ("WHD").

3. On October 12, 2016, the Administrator issued a Determination Letter identifying alleged violations of the H-1B provisions of the INA. Due to an administrative error, many of the allegations contained within the Determination Letter were inaccurate.

4. 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.

GENERAL PROVISIONS

5. These Consent Findings and Order disposing of this proceeding shall have the same force and effect as an Order made after a full hearing.

6. The entire record forming the basis on which the Consent Findings and Order is entered shall consist of the Determination Letter and attachments, as amended herein, and these agreements and consents.

7. The Parties hereby waive all further procedural steps between themselves before the Administrative Law Judge.

8. The Parties waive any right to challenge or contest the validity of these Consent Findings and Order.

9. All violations alleged in the Determination Letter issued by the Administrator, as amended herein, are and shall be deemed fully resolved by these Consent Findings and Order with regard to both the Complainant and Respondent.

10. These Consent Findings and Order shall become final immediately upon approval of the Administrative Law Judge. The effective date of these Consent Findings and Order shall be the date of approval by the Administrative Law Judge.

SPECIFIC PROVISIONS

11. The Administrator hereby amends the Determination Letter of October 12, 2016, by striking the body of the letter and replacing it with the following:

Based on the evidence obtained in the recently concluded Wage and Hour Division investigation of Competent Systems, Inc. under the H-1B provisions of the INA, as amended, (8 U.S.C. § 1182(n)), it has been determined that your firm committed the following violations: failure to pay the required wage rate and required or accepted payment of the additional petition fee. Any Labor Condition Application (LCA) (ETA Form 9035 and /or ETA 9035E) included in this investigation is listed or enclosed.

The specific violations and the remedy imposed for each violation are set forth in the enclosed Summary of Violations and Remedies. As a result of the violations, a civil money penalty in the total amount of \$500.00 is assessed. Your firm owes back wages in the amount of \$2,500.00 to one (1) H-1B nonimmigrant. Your firm is liable for any ongoing violations.

You must pay the civil money penalty and the back wages as aforesaid no later than 15 days after the date of this determination, unless you appeal this determination within that time period. The civil money penalty must be paid by sending a certified check or money order made payable to "Wage and Hour Division, U.S. Department of Labor" 61 Forsyth Street, S.W., Room 7M10, Atlanta, GA 30303. You must pay back wages in the amounts listed on the Summary of Unpaid Wages, Form WH-56, which has previously been provided to you. The back wage payments must follow procedures as outlined in the Back Wage Disbursement and Pay Evidence Instruction enclosed with this letter. The employer is responsible for withholding the legally required deductions (e.g., Federal and State income tax and FICA) and paying these amounts and the employers' contributions to appropriate entities. A check in the net amount of wages should be made payable to the [name of the individual owed back wages or "Wage-Hour Labor"] and must be submitted to the Wage and Hour Division, U.S. Department of Labor, 61 Forsyth Street, S.W., Room 7M10, Atlanta, GA 30303.

This debt is subject to the assessment of interest, administrative cost charges and penalties in accordance with the Debt Collection Improvement Act of 1996 and Department of Labor policies. Interest will be assessed at the Treasury Tax and Loan Account rate on any principal that becomes delinquent. The rate is currently 1%. Administrative cost charges will be assessed to help defray the Government's cost of collecting this debt. A penalty at the rate of 6% will be assessed on any portion of the debt remaining delinquent for more than 90 days. In order to avoid these charges, you must forward payment to the Wage and Hour Division, U.S. Department of Labor, 61 Forsyth Street, S.W., Room 7MIO, Atlanta, GA 30303 by the indicated due date. Please note that any pending bankruptcy action may affect the foregoing remedies.

You and any interested party have the right to request a hearing on this determination. Such a request must be dated, be typewritten or legibly written, must specify the issue(s) stated in this notice of determination on which a hearing is requested, state the specific reason(s) why the requestor believes this determination to be in error, be signed by the requestor or by an authorized representative, and include the address at which the requestor or the authorized representative desires to receive further communications related to the hearing request.

The request must be made to and received by the Chief Administrative Law Judge (OAU) at the following address no later than 15 calendar days after the date of this determination:

U.S. Department of Labor
Chief Administrative Law Judge ATTN:
Deputy Secretary of BALCA 800 K
Street NW., Room 400 North
Washington, DC 20001-8002

If you or any interested party do not make a timely request for a hearing, this determination will become a final and unappealable order of the Secretary of Labor.

The procedure for filing a request for a hearing is provided in 20 C.F.R. § 655.820. Please note that 20 C.F.R. § 655.820(f) requires that a copy of any such request for a hearing must also be sent to me and to those parties listed below who were provided a copy of this determination. The Department of Labor will notify any complainant and interested party of any appeal. Due to the delayed delivery of mail in certain areas, you may wish to transmit your request to the OALJ via facsimile at 202-693-7365 to ensure timely receipt.

A copy of 20 C.F.R. Part 655 subparts H and I can be found at the following web address: <http://www.gpo.gov/fdsys/pkg/CFR-2014-title20-vol1>.

12. The Administrator further amends the Determination Letter of October 12, 2016, by striking the Summary of Violations and Remedies attachment and replacing it with the following:

Summary of Violations and Remedies Competent
Systems, Inc.

Violation: Competent Systems, Inc. failed to pay wages as required in violation of 20 C.F.R. § 655.731. See 20 C.F.R. 655.805(a)(2).

The violation includes failure to pay the required wage rate by taking illegal deductions.

Remedy: No civil money penalty is assessed. Competent Systems, Inc. is ordered to pay back wages in the amount of \$2,500.00 to one (1) H-1B nonimmigrant worker. Competent Systems, Inc. is ordered to comply with 20 C.F.R. § 655.731 in the future.

Violation; Competent Systems, Inc. required or accepted from an H-1B worker, payment or remittance of the additional petition fee incurred in filing an H-1B petition in violation of 20.C.F.R. § 655.731 (c)(10)(ii).See 20 C.F.R. § 655.805(a)(11).

Remedy: A civil money penalty in the amount of \$500.00 is assessed. Competent Systems, Inc. is ordered to comply with 20 C.F.R. § 655.731(c)(10)(ii) in the future. Competent Systems, Inc. is ordered to refund the petition filing fee. Such refund is included in the monies found in the cited wage violation.

13. The Administrator further amends the Determination Letter of October 12, 2016, by including the following Labor Condition Application ("LCA") reference number: I-200-14071-320148.

14. Respondent withdraws the aforesaid exception to administrative determination and will make the back wage and civil money penalty payments contained within the amended Determination Letter within thirty (30) days of the date of this Order.

15. Respondent withdraws its Request for Hearing filed in this matter.

REPORTING AND ENFORCEMENT

16. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of these Consent Findings and Order, is retained by the Office of Administrative Law Judges.

17. Enforcement proceedings for violation of these Consent Findings and Order may be initiated at any time upon the filing with the Administrative Law Judge a motion for an Order of enforcement and sanctions.

18. 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.

19. These Consent Findings and Order shall constitute the final Administrative Order in this case.

ORDER

It is hereby **ORDERED** that:

1. The **Consent Findings are ADOPTED AND APPROVED** as the final Administrative Order pursuant to the provisions of 29 C.F.R. §18.9;
2. IT IS FURTHER ORDERED that this matter is hereby **DISMISSED** with prejudice.

SO ORDERED.

DANA ROSEN
Administrative Law Judge

DR/mjw
Newport News, VA