



**Issue Date: 22 August 2012**

**OALJ Case Number: 2012-MSP-00007**  
**MSHA Case Number: 2012-MSPA-R-00007**

*In the Matter of:*

**CAROL PAUL,**  
*Respondent.*

**DECISION AND ORDER GRANTING SECRETARY'S  
MOTION FOR SUMMARY DECISION**

This is an enforcement proceeding arising under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. § 1801 *et seq.*, and the applicable regulations issued thereunder at 29 C.F.R. Part 500.

Pursuant to Respondent's request for a hearing this matter was referred to the Office of Administrative Law Judges (Office) and docketed on June 18, 2012. That same day, the Secretary of Labor filed a Motion to Dismiss, or in the Alternative, for Summary Judgment, asking the Court to dismiss the case as moot, or in the alternative, to enter summary judgment affirming her determination to refuse issuance of a Farm Labor Contractor ("FLC") Certificate of Registration to Respondent.

On June 25, 2012, I issued a Notice of Docketing which set forth a number of actions for the parties to perform within thirty (30) days after the filing of Respondent's Statement of Intent to Continue Opposition to the Secretary's Determination (Statement).

Respondent filed his Statement on July 17, 2012. Respondent generally denied that the facts set forth by the Secretary are undisputed and claimed that all penalties were in fact paid. He also asserted that the conduct complained of does not give rise to the withholding of a FLC Certificate of Registration.

On July 31, 2012, the Secretary filed an Unopposed Motion to Stay the Prehearing Order pending a determination on her Motion discussed above. The cover letter accompanying the Secretary's motion noted that she was amending her Motion to Dismiss, or in the Alternative, for Summary Judgment, inasmuch as her counsel had received on July 25, 2012 documentation establishing that payment of the \$1,000 civil money penalty assessed against Respondent on August 18, 2010 had been received by the Wage and Hour Division nearly eleven months later on July 6, 2011.

I granted the Secretary's Unopposed Motion to Stay on August 15, 2012 pending my ruling on the Secretary's Motion to Dismiss, or in the Alternative, for Summary Judgment.

### **Background**

According to the Secretary, Respondent was previously the holder of a FLC Certificate of Registration. *See* Sec'y Motion to Dismiss, Exhibits C & D. Between 2001 and 2010, she notified Respondent on numerous occasions that he had committed various violations of the MSPA provisions. Specifically, the Secretary asserts that Respondent violated section 101(a) by failing to register as an FLC; section 101(b) by failing to register an employee; section 105(2) by failing to apply to amend his Certificate; sections 201(a) and/or 301(a) by failing to disclose conditions to workers; sections 201(d)(1) and/or 301(c)(1) by failing to make or keep employer records; section 202(a) and/or 302(a) by failing to pay wages when due; section 401(b)(1)(A) by failing to provide safe transportation vehicles; section 203(a) by failing to ensure housing safety and health; section 401(b)(1)(B) by failing to ensure a driver had a valid license; and section 401(b)(1)(C) by failing to obtain prescribed insurance coverage. Civil money penalties were assessed by the Secretary for each of these violations, and those penalties were paid by Respondent. *See* Sec'y Motion to Dismiss, Exhibits E, F, G, H and I.

On February 28, 2010, Respondent's FLC Certificate of Registration expired inasmuch as he had failed to file a renewal application at least thirty days before its expiration date. Respondent ultimately filed a renewal application but did not do so until June 29, 2010, four months after his FLC Certificate had expired. *See* Sec'y Motion to Dismiss, Exhibits C & D.

On August 18, 2010, the Secretary informed Respondent that he had failed to register as an FLC in violation of MSPA section 101(a), and a civil money penalty of \$1,000 was assessed. Respondent did not contest the violation, and the Secretary thereafter informed him by letter dated October 7, 2010 that the determination had become a final and unappealable Order on September 23, 2010.

On October 13, 2011, the Secretary notified Respondent of her determination not to issue a Certificate of Registration to him based on his failure to pay the \$1,000 civil money penalty issued on August 18, 2010,<sup>1</sup> as well as his recurring violations of the MSPA between 2001 and 2010.

### **Discussion**

Summary judgment is appropriate when there is "no genuine issue of dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56 (a). The Department of Labor's Rules of Practice and Procedure for Administrative

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<sup>1</sup> In the Motion to Dismiss, the Secretary stated that Respondent had not paid this penalty. As noted above, however, on July 25, 2012, the Secretary received documentation from the Wage and Hour Division that payment of the \$1,000 civil money penalty was, in fact, received on July 6, 2011.

Hearings Before the Office of Administrative Law Judges also set forth a rule for summary decision, derived from FED. R. CIV. P. 56. This regulation states in relevant part:

Where no genuine issue of material fact is found to have been raised, the administrative law judge may issue a decision to become final as provided by the statute or regulations under which the matter is to be heard.

29 C.F.R. § 18.41(a)(1). *See also Pacific Forestry Technologies, Inc. and Miguel Lozano*, 2008-MSP-1 (ALJ Mar. 11, 2008)(granting summary decision to the Secretary in a MSPA certification revocation case).

The MSPA protects migrant and seasonal agricultural workers in their dealings with farm labor contractors and other covered persons, and requires those regulated entities to observe certain labor, health, and safety standards when recruiting, soliciting, hiring, employing, furnishing, transporting, or housing farmworkers. *See* 29 U.S.C. § 1801, 1802. To assure the necessary protections for these workers, the MSPA requires that all FLCs be registered by the Secretary, with the Secretary specifying the range of activities that the FLC is authorized to perform. Before performing any of these activities, FLCs must therefore apply for and obtain Certificates of Registration from the Secretary. *See* 29 U.S.C. § 1811(a), (b); 29 C.F.R. § 500.40.

The MSPA provides an enforcement mechanism for administrative “certificate” action” to be taken against FLCs under certain prescribed circumstances. Section 103(a)(3) of the MSPA provides in relevant part:

In accordance with regulations, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration (including a certificate of registration as an employee of a farm labor contractor) if the applicant or holder has failed to comply with the [Act] or any regulations under this [Act]

29 U.S.C. § 1813(a)(3). The Department of Labor’s regulation at 29 C.F.R. § 500.51(c) mirrors this statutory language. The Secretary has broad discretion under the MSPA to refuse to renew or issue a Certificate of Registration if the applicant or holder does not comply with the Act and its regulations.

Insofar as Respondent has challenged the Secretary’s determination not to renew his Certificate of Registration, the Secretary argues that Respondent’s hearing request is moot. The MSPA provides that “a certificate may be temporarily extended by the filing of an application with the Secretary at least thirty days prior to its expiration.” 29 U.S.C. § 1814(b)(1)(B). The MSPA’s implementing regulations further explain that an FLC may continue to operate until a final determination has been made on a renewal application so long as the application is timely filed. *See* 29 C.F.R. § 500.50(b). The regulations explain “timely filed” means that the application has been received by the Department at least 30 days prior to expiration if hand-delivered or sent by regular mail, or the application was mailed via certified mail at least 30 days before expiration.” *See* 29 C.F.R. § 500.50(b)(1).

Prior decisions have held that where an FLC requests a hearing on a determination involving a Certificate of Registration that has expired on its own terms, the expiration of the Certificate “thereby render[s] the Respondents’ request for hearing moot.” *Evergreen Forestry Services, Inc., and Peter Smith, III*, 2003-MSP-3 (ALJ July 9, 2003). *See also Pacific Forestry Technologies, Inc. and Miguel Lozano*, 2008-MSP-1 (ALJ March 11, 2008)(dismissing revocation hearing request as moot because the FLC failed to timely renew his Certificate).

In this case, Respondent’s Certificate expired on February 28, 2010, and he did not file for renewal until June 29, 2012, i.e., four months after the Certificate expired. *See Sec’y Motion to Dismiss*, Exhibits C & D. Respondent’s attempt to renew his FLC certificate of registration was thus untimely in that no application was received 30 days before its expiration pursuant to 29 U.S.C. § 1814 (b)(1)(B) or 29 C.F.R. § 500.50(b). Accordingly, I find that Respondent’s request for a hearing has become moot inasmuch as his Certificate has expired on its own terms.

Insofar as Respondent’s request for a hearing is construed to challenge the Secretary’s determination not to issue him a new Certificate, the Secretary argues that she is entitled to summary judgment. The Secretary avers that the record clearly demonstrates Respondent has repeatedly failed to comply with the MSPA and its regulations, as evidenced by his lengthy history of violations. The Secretary states that she was acting within her discretion under the MSPA to refuse to renew or issue the FLC Certificate in this case. *See Pacific Forestry Technologies, Inc.*, 2008-MSP-1 (the Secretary “was acting clearly within her authority” to refuse to renew or revoke an FLC Certificate based on lengthy history of uncontested violations). I find that Respondent’s lengthy and undisputed history of MSPA violations provides a more than sufficient basis for the Secretary’s exercise of her discretion to refuse to issue a Certificate.

Considering the entire record, I find there are no genuine issues of material fact, and Plaintiff is entitled to summary judgment as a matter of law. The Secretary’s determination not to issue a Farm Labor Contractor Certificate of Registration to Respondent Carol Paul is thus AFFIRMED.

A

**STEPHEN L. PURCELL**  
Chief Administrative Law Judge

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Issuance of a Notice of Intent (“Petition”) to modify or vacate that is received by the Administrative Review Board (“Board”) within twenty (20) days of the date of issuance of the administrative law judge’s decision. *See* 29 C.F.R. §§ 500.263 and 500.264; Secretary’s Order 1-2002, 67 Fed. Reg.

64272 (2002). The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. A copy of the administrative law judge's decision must be attached to the Petition that is filed with the Board. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. *See* 29 C.F.R. § 500.264(b).

If the Board declines to modify or vacate the administrative law judge's decision, then the decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 500.262(g).