



Issue Date: 16 July 2014

OALJ Case Number: 2014-MSP-00001
MSHA Case Number: 2014-MSPA-R-00001

In the Matter of:

FRANCISCO RODRIGUEZ HERRERA, JR.

Respondent.

DEFAULT JUDGMENT

This is an enforcement proceeding under the Migrant and Seasonal Agricultural Worker Protection Act of 1983 (“MSPA”), 29 U.S.C. § 1801 *et seq.*, and the implementing regulations at 29 C.F.R. Part 500.

On December 2, 2013, The Office of the Solicitor, U.S. Department of Labor (“Plaintiff”) filed a Motion to Dismiss or, in the alternative, for Summary Judgment (“Motion”) and Order of Reference on December 2, 2013. Respondent Francisco Rodriguez Herrera, Jr. (“Respondent”) was a Farm Labor Contractor (“FLC”) Certificate of Registration holder, which authorized his business, Herrera Farm Labor, to engage in “farm labor contracting activities.” *See* 29 C.F.R. § 500.40.

On December 5, 2013, I issued a Notice of Docketing and Order to Show Cause in which I notified the parties that this matter had been docketed in the Office of Administrative Law Judges (“OALJ”) and ordered Respondent file a brief addressing: (1) whether Respondent’s request for a hearing is moot, and (2) whether there is a genuine issue of material fact for a hearing in this case. To date, Respondent has failed to respond to the Notice of Docketing and Order to Show Cause.

Although I previously set forth the factual background provided in Plaintiffs December 2, 2013 Motion, I will restate it here for the purpose of clarity.

The evidence attached to Plaintiff’s December 2, 2013 Order of Reference and Motion shows that Respondent was convicted of a felony in California state court on November 19, 2010 for transporting methamphetamine. The motion further notes that:

On February 28, 2011, Respondent filed an Application for a renewal of his FLC Certificate of Registration under the MSPA with the Employment Standards Administration, Wage and Hour Division, U.S. Department of Labor (“WHD”). On his application, Respondent was asked, “Have you been convicted within the past 5 years, under State or Federal law, of any of the following crimes? . . . Any felony involving . . . violation of narcotics laws . . .” He checked “No.” WHD subsequently approved Respondent’s application and issued a renewed FLC Certificate of Registration on April 19, 2011. The Certificate had an expiration date of March 31, 2013.

Sometime in January 2012, Plaintiff’s San Francisco Regional office learned of Respondent’s conviction. It therefore submitted a recommendation to revoke Respondent’s Certificate to WHD pursuant to 29 U.S.C. § 1813; 29 C.F.R. § 500.145, 500.51. On May 17, 2012, WHD sent a letter to Respondent informing him that his FLC Certificate of Registration had been revoked for failing to disclose his felony conviction. On June 13, 2012, Respondent filed an appeal of WHD’s ruling. Respondent did not state therein his defense or his arguments for the appeal. Respondent’s Certificate of Registration expired pursuant to its original expiration date on March 31, 2013. Respondent did not seek to renew his Certificate of Registration at that time, despite his ability to do so. *See* 29 U.S.C. § 1814(b)(1).

On December 2, 2013, Plaintiff filed with the OALJ an Order of Reference and Motions to Dismiss and for Summary Judgment. In its Motion to Dismiss, Plaintiff argues that Respondent’s hearing request is moot because the sole issue that Respondent is contesting is the revocation of his FLC Certificate of Registration. However, the Certificate expired on its own terms on March 31, 2013. There is thus no issue to resolve and no reason for a hearing in this case. Simply put, the issue is now moot.

In the alternative, Plaintiff seeks to dispose of this case under a motion for summary judgment. *See* 29 C.F.R. § 18.40. Plaintiff argues that there is no dispute that Respondent was convicted of a felony for violating narcotics laws and he misrepresented that conviction on his application for renewal of his FLC Certificate. MSPA and its implementing regulations allow the WHD to revoke a Certificate if a person has been convicted of violating narcotics laws within the past 5 years, or for failing to disclose such convictions on the application for the Certificate. 29 U.S.C. § 1813(a)(1), (a)(5)(B). As Respondent violated both provisions, there is no issue of material fact for a hearing in this case.

To date, Respondent has failed to respond to the Notice of Docketing or the Order to Show Cause.

OALJ’s regulations provide at 29 C.F.R. § 18.6(d)(2)(v) that:

If a party or an officer or agent of a party fails to comply . . . with an order, . . . the administrative law judge, for the purpose of permitting resolution of the relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may . . . [r]ule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.

At this point, I have not received any correspondence from Respondent or any indication that he plans to contest the information included in the Order of Reference. Complainant failed to respond to my December 5, 2014 Notice of Docketing and Order to Show Cause.

After reviewing the record and considering Respondent's non-participation, a Judgment by Default is entered against Respondent pursuant to § 18.6(d)(2)(v).

It is hereby ORDERED that Respondent's request for hearing is DISMISSED with prejudice.

SO ORDERED.

STEPHEN L. PURCELL
Chief Administrative Law Judge