

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 23 August 2019

CASE NO.: 2019-MSP-00003

In the Matter of:

CTO/CHF PARTNERSHIP dba CIDER HILL FARM,
Employer.

**ORDER GRANTING MOTION TO WITHDRAW REFERENCE
AND CANCELLING HEARING**

This matter arises under the Migrant & Seasonal Agricultural Worker Protection Act (“MSPA”), 29 U.S.C. §§ 1801-72, and the implementing regulations set forth at 29 C.F.R. Part 500. The procedures governing this proceeding are set forth at the implementing regulations, and the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (“Rules of Practice”), 29 C.F.R. Part 18.

On March 21, 2017, the Secretary of Labor (“Secretary”), acting by delegation through the Administrator of the Wage and Hour Division,¹ issued a written Assessment of Civil Money Penalties for MSPA Violations, totaling \$700.00. *See* 29 C.F.R. § 500.210(b) (requiring written notice of the assessment of a civil money penalty). On April 20, 2017, Employer filed a Request for Hearing. *See* 29 C.F.R. § 500.212(a) (“Request for hearing”). On February 13, 2019, the Secretary issued an Order of Reference, which referred the matter to the Office of Administrative Law Judges for hearing. *See* 29 C.F.R. § 500.224(a) (“Referral to Administrative Law Judge”). The matter was thereupon assigned to me, **Administrative Law Judge NORAN J. CAMP** (“presiding judge”).

On June 26, 2019, the Secretary filed an Assented-to Motion To Withdraw Order of Reference with Prejudice (“Motion”), citing Fed. R. Civ. P. 41(a), among others. According to the implementing regulations, the Secretary’s Order of Reference is “given the effect of a complaint,” and the Employer’s Request for Hearing is “given the effect of ... [an] answer thereto.” 29 C.F.R. § 500.224(a). Therefore, I construe the Motion to be the functional equivalent of a motion for voluntary dismissal under Fed. R. Civ. P. 41(a), since neither the implementing regulations nor the Rules of Practice address withdrawal of the Order of Reference.²

¹ *See* 74 Fed. Reg. 58836 ¶ 5(A)(8) (delegation) (2009)

² *See* 29 C.F.R. § 500.219 (the Rules of Practice [29 C.F.R. Part 18] apply except as specifically provided by the implementing regulations), and § 18.10(a) (“The Federal Rules of Civil Procedure (FRCP) apply in any situation not provided for or controlled by these rules [the Rules of Practice], or a governing statute, regulation, or executive order”),

The Secretary asserts that the motion is assented to by Employer, and in any event, Employer has not opposed or otherwise responded to the Motion. *See* 29 C.F.R. § 18.33(d) (authority to grant unopposed motion).

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Motion, filed June 26, 2019, is **GRANTED**;
2. The Order of Reference in this case, filed February 13, 2019, is **WITHDRAWN WITH PREJUDICE**; and
3. The hearing in this matter, previously set for September 17, 2019, is **CANCELLED**.

SO ORDERED.

NORAN J. CAMP
Administrative Law Judge

Boston, Massachusetts