

U.S. Department of Labor

Office of Administrative Law Judges
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San Francisco, CA 94103-1516

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Issue Date: 15 December 2009

CASE NO. 2009-SCA-0001

In the Matter of:

CHARLES IGWE, and KSC TRI SYSTEMS, INC., USA,
doing business as KSC-TRI SYSTEMS, TOTAL RESOURCE
INDUSTRIES, TOTAL RESOURCES INDUSTRIES,
TOTAL VOCATIONAL EDUCATION INSTITUTE,
PREFERRED EDUCATIONAL DIAGNOSTICS AND
TESTING CENTER, PREFERRED EDUCATIONAL
DIAGNOSTICS TRAINING CENTER, PREFERRED
EDUCATION AND DIAGNOSTIC CENTER, PREFERRED
EDUCATIONAL & DIAGNOSTIC CENTER, TOTAL FIT-WELL
GROUP, and TOTAL OUTSOURCING SPECIALISTS,

Respondents.

DECISION AND ORDER ENTERING DEFAULT JUDGMENT

This matter arises under the McNamara-O'Hara Service Contract Act ("the Act," "SCA"), as amended, 41 U.S.C. § 351 *et seq.* The Act requires parties who are awarded federal contracts to pay the required wage, provide minimum fringe benefits, and keep adequate records. It also provides for recovery by undercompensated employees of compensation they are due, as well as the debarment of violators from receiving federal contracts for a period of three years. The hearing in this matter was scheduled for 1:30 p.m. on Tuesday, November 3, 2009, in Long Beach, California. Respondents, however, failed to appear to present their case, and failed to reply to an order to show good cause for their failure to appear. As a result, Respondents are subject to default judgment against them.

PROCEDURAL HISTORY

Plaintiff, the Acting Administrator of the Wage and Hour Division, U.S. Department of Labor, filed a Complaint with the Office of Administrative Law Judges, Office of the Chief Judge, on October 8, 2008. Chief Judge John M. Vittone issued a Notice of Docketing on November 3, 2008. On December 1, 2008, Plaintiff filed a motion to amend the Complaint, which Chief Judge Vittone granted on December 15, 2008.

Respondents failed to file a timely answer to the Complaint and Judge Vittone issued an Order to Show Cause on February 11, 2009, directing Respondents to show cause why a default judgment should not be entered against them, as provided for in 29 C.F.R. § 6.16(c). Respondents timely filed a response to the Order to Show Cause on March 13, 2009, stating that they had not yet received the Amended Complaint. On March 26, 2009, Plaintiff filed a Brief in Support of Default Judgment which stated that Respondents were properly served with the Amended Complaint. On April 30, 2009, Judge Vittone ordered Respondents to answer the Amended Complaint, which was attached to the order, within 30 days. Respondent's received the Amended Complaint of May 19, 2009, and requested an extension of the

deadline for filing its answer. Judge Vittone granted the motion and ordered that an answer be filed on or before June 19, 2009. Respondents answered the Amended Complaint on June 19, 2009. In a filing dated April 28, 2009, Respondents answered the Amended Complaint.

This matter was assigned to me on July 7, 2009. On July 13, 2009, I issued a Notice of Trial setting this matter for trial beginning at 1:30 p. m. on November 3, 2009, in Long Beach, California. The Notice of Trial ordered the parties to file pre-hearing statements at least 14 days before trial and to exchange exhibits at least seven days before trial.

By letter dated October 9, 2009, Plaintiff advised this court that its notices of depositions to Respondent's had been returned by Federal Express because the house at Respondents' address of record in Granada Hills, California was vacant. Plaintiff's letter was also served on Respondents by fax.

On October 20, 2009, Plaintiff timely filed its Pre-Hearing Statement. In addition to serving the statement on Respondents by both fax and certified mail at the Granada Hills address, Plaintiff also served the Pre-Hearing Statement by certified mail at addresses in Pflugerville, Texas, Porter Ranch, California, and Temple, Texas. The Pre-Hearing Statement includes a request that two of Plaintiff's witnesses be permitted to testify by telephone. Respondents did not file a pre-hearing statement.

On October 22, 2009, I issued an order which directed Respondents to show cause why I should not permit testimony by telephone, as requested by Plaintiff. The order also directed Respondents to immediately file their pre-hearing statement, and to identify an address, telephone number, and fax number by which they may receive documents. The order advised Respondents that if they failed to comply, they risked a default decision. The October 22, 2009 order was served on Respondents by mail to addresses in Granada Hills, California; Porter Ranch, California; Temple, Texas; and Pflugerville, Texas.¹ This office also attempted to serve the order by fax on six occasions between October 22 and 23, 2009. While the telephone rang on each attempt, no fax machine engaged on the recipient's end of the line. Respondents did not reply to the October 22, 2009 order, and on October 29, 2009, this office advised Plaintiff that its request for telephonic testimony was granted.

On November 3, 2009, in Long Beach, California, I called this case for trial at 1:30 p.m., in accordance with the Notice of Trial. Plaintiff was present and prepared to present its case. Respondents were not. I waited for 90 minutes until 3:00 p.m. to afford Respondents an extended opportunity to appear. They did not. I admitted Plaintiff's Pre-Trial Statement as Administrative Law Judge Exhibit 1 (ALJX 1), and my October 22, 2009 order as Administrative Law Judge Exhibit 2 (ALJX 2). Plaintiff submitted 116 exhibits which were admitted as Plaintiff's Exhibits 1-116. I deferred requiring the filing of briefs until the question of whether a default judgment would be entered was clarified.

On November 13, 2009, I issued an Order to Show Cause. The order directed Respondents to show good cause within 10 days explaining why they failed to appear at trial. It explained that if Respondents fail to demonstrate good cause for their failure to appear, I would, as provided for in the regulations at 29 C.F.R. § 6.16(c), find that the facts in this matter are as they were alleged in Plaintiffs complaint and then enter a default judgment. This order was served on Respondents by mail at addresses in Granada Hills, California; Porter Ranch, California; Temple, Texas; and Pflugerville, Texas.

¹ On October 31, 2009, the United States Postal Service returned the order served at the Temple, Texas address, stating that it was unable to forward the order.

To date, Respondents have not answered the Order to Show Cause, which I admit into the record as Administrative Law Judge Exhibit 3 (ALJX 3). I hereby close the record of the trial in this matter and enter a default judgment as set forth below.

DISCUSSION

The regulations governing hearings under the Act provide that when a party appears at the hearing and no party appears for the other side, an Administrative Law Judge (ALJ) is authorized, “if such [non-appearing] party fails to show good cause for such failure to appear, to . . . find the facts as alleged in the complaint and to enter a default judgment containing such findings, conclusions and order as are appropriate.” 29 C.F.R. § 6.7(b).

Respondents failed to appear at trial and failed to respond to the November 13, 2009 order directing them to show good cause for their failure to appear.² Every effort was made to ensure that orders were served on Respondents, including serving them at four addresses. The Office of Administrative Law Judges’ Rules of Practice and Procedure require only that OALJ serve documents by regular mail to a party’s last known address. 29 C.F.R. § 18.3(c). This office served Respondents at every known address, thus exceeding what is required by the regulation. Under the authority provided by 29 C.F.R. § 6.7(b), I find that Respondents are subject to default judgment against them.

I. FINDINGS OF FACT

Pursuant to 29 C.F.R. § 6.7(b), I find that the facts in this matter are as they were alleged in Plaintiff’s Amended Complaint. I adopt as true the following facts set forth therein:

1. Respondents, Charles Igwe, individually, and KSC-TRI Systems USA, Inc., d/b/a KSC TRI Systems, USA, Inc., KSC-TRI Systems, Total Resource Industries, Total Resources Industries, Total Vocational Education Institute, Preferred Educational Diagnostics and Testing Center, Preferred Educational Diagnostics Training Center, Preferred Education and Diagnostic Center, Preferred Educational & Diagnostic Center, Total Fit-Well Group and Total Outsourcing Specialists (hereinafter collectively referred to as “KSC”) is and at all times relevant hereto was a contractor engaged in the business of providing service employees to various federal governmental agencies, including the U.S. Air Force in Illinois, Arizona and Nevada, the Bureau of Land Management in Idaho, and the Department of Justice in Arizona. Respondents’ principal place of business is located at 17485 Doric Street, Granada Hills, CA 91344. At all times hereinafter mentioned, Respondent Charles Igwe exercised control and supervision of the management and operations of KSC TRI-Systems USA, Inc., *et al.*

2. The U.S. Department of the Air Force, Scott AFB, awarded KSC and Charles Igwe the following contract (hereinafter “Scott AFB Contract”), in the amount and for the services set forth below:

Contract Number:	FA4407-07-M-R046	Service:	Receptionist Services
Amount:	\$28,912	Award Date:	10/1/2006

The contract was subject to the SCA and contained the representations and stipulations required by the Act and its regulations. Modifications and/or extensions in the option years were applied thereto. Ms. Linda Clark was the employee retained under this contract.

² In addition, Respondent’s failed to file a pre-trial statement as required by the Notice of Trial and failed to reply to the October 22, 2009 order.

3. The U.S. Department of the Interior, Bureau of Land Management, BLM24 ID, Idaho State Office, awarded KSC and Charles Igwe the following contract (hereinafter "BLM-ID Contract"), in the amount and for the services set forth below:

Contract Number:	DLP070015	Service:	Receptionist Services
Amount:	\$37,040.28	Award date:	1/31/2007

The contract was subject to the SCA and contained the representations and stipulations required by the Act and its regulations. Modifications and/or extensions in the option years were applied thereto. Ms. Beverly L. Lanfear and Ms. Iva Lou Rogers were the employees retained under this contract.

4. The United States Department of Justice, Federal Correctional Institute, awarded KSC and Charles Igwe the following contract (hereinafter "FCI Contract"), in the amount and for the services set forth below:

Contract Numbers:	J60803c-141, DJB60803141 (1/2004)
Service:	Computer Instructor
Amount:	\$30,320.70
Award Date:	6/19/2002

The contract was subject to the SCA. Modifications and/or extensions in the option years were applied thereto, Ms. Diana Becerra was the employee retained under this contract.

5. The U.S. Department of the Air Force, Davis Monthan AFB, awarded KSC-TRI Systems USA, Inc. ("KSC") and Charles Igwe the following contract (hereinafter "Davis Monthan AFB Contract"), in the amount and for the services set forth below:

Contract Number:	FA4877-07-P-0002	Service:	Davis Monthan Air Force Base
Amount:	\$7,087.90	Award Date:	10/1/2006

The contract was subject to the SCA and contained the representations and stipulations required by the Act and its regulations. Modifications and/or extensions in the option years were applied thereto. Mr. Jesse South was the employee retained under this contract.

6. The U.S. Department of the Air Force, Nellis AFB, awarded KSC-TRI Systems USA, Inc. ("KSC") and Charles Igwe the following contract (hereinafter "Nellis AFB Contract"), in the amount and for the services set forth below:

Contract Number:	FA4861-06-M-R005	Service:	Nellis Air Force Base
Amount:	\$64,729.41	Award Date:	9/19/2005

The contract was subject to the SCA and contained the representations and stipulations required by the Act and its regulations. Mr. Robert Whitaker was the employee retained under this contract.

7. Services specified in the above described contracts were furnished in the United States by Respondents to the Government of the United States through the use of service employees, as defined by Section 8(b) of the SCA (41 U.S.C. §357(b)).

8. During the period required for the performance of the Contracts identified in paragraphs 2-6 above, Respondents Mr. Igwe and KSC failed to pay service employees, who were employed in the performance of work on the contracts, their minimum monetary wages and fringe benefits and holiday pay as required by the Contract, by Sections 2(a)(1) and (2) of the SCA (41 U.S.C. §351(a)(1) and (2)) and by § 4.6 of the regulations promulgated by the Secretary of Labor (29 C.F.R. § 4.6(b)(1)). By reason of the aforesaid breaches of their respective Contracts, Respondents became liable to Ms. Clark, Ms. Lanfear, Ms. Rogers, Ms. Becerra, Mr. South, and Mr. Whitaker for a total of \$71,652.39, a sum equal to the underpayment of minimum wages, fringe benefits and holiday pay, as set forth below by employee:

<u>Name</u>	<u>Period Covered</u>	<u>SCA Wages Due</u>
Lanfear, Beverly L.	02/10/07 — 03/17/07	\$1,665.29
Rogers, Iva Lou	02/10/07 — 03/17/07	\$1,240.09
Clark, Linda	08/27/05—08/25/07	\$12,187.96
Becerra, Diana	09/10/05 — 09/08/07	\$30,320.70
South, Jesse	11/04/06—10/06/07	\$7,087.90
Whitaker, Robert	06/23/06 — 5/16/08	\$19,150.45
TOTAL:		\$71,652.39

9. Respondents failed and refused to deliver wage payments promptly to the employees and in no event later than one pay period following the end of the pay period in which they are earned, which in no event is to be longer than semi-monthly for service employees employed in the performance of work on the Scott AFB Contract, the BLM-ID Contract, and FCI Contract as required by the contracts, and by 29 C.F.R. § 5 4.6(h) and 4.165(b).

10. Respondents failed to make and maintain for three years from the completion of the work, payroll records as specified in 29 C.F.R. §4.6(g)(1)(i) through (vi) for each employee and make them available for inspection by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor, in the performance of work on the Contracts described above, as required by the contracts, and by 29 C.F.R. § 4.6(g).

11. Respondents failed to make lawful deductions to the pay of each employee, thus failing to pay all wages free and clear, in the performance of work on the Scott AFB Contract, the BLM-ID Contract, the FCI Contract, the Davis Monthan AFB Contract, and the Nellis AFB Contract as required by the contracts, and by 29 C.F.R. § 4.6(h).

12. Respondents failed to notify each service employee commencing work on the contracts described above of the minimum monetary wage and any fringe benefits required to be paid pursuant to these contracts, or, failed to post the wage determination attached to the Scott AFB Contract and the BLM-ID Contract, as required by the contracts, as required by 29 C.F.R. §§ 4.6(e), 4.183.

13. By reason of the aforesaid breaches of the Scott AFB Contract, the BLM-ID Contract, the FCI Contract, the Davis Monthan AFB Contract, and the Nellis AFB Contract, and the violations of the Service Contract Act, and regulations, Respondents have become liable for a sum equal to the underpayments of minimum monetary wages, fringe benefits, and holiday pay, as provided by Section

3(a) of the SCA (41 U.S.C. §352(a)) and the Respondents have become subject to Section 5(a) of the Service Contract Act (41 U.S.C. §354(a)), whereby Respondents and any firm, corporation, partnership, or association in which they have a substantial interest may be denied the award of any contract with the United States until three years have elapsed from the date of publication by the Comptroller General of the list containing their names as having been found to have violated the SCA.

II. LIABILITY FOR UNDERPAID COMPENSATION

Under Section 2(a) of the Act, Respondents are liable for a sum equal to the amount of underpaid compensation due to employees engaged in the performance of its contracts. 41 U.S.C. § 352(a). Therefore Respondents are jointly and severally liable for \$71,652.39 representing underpaid wages and required benefits not furnished. Such amount is due to the six employees listed in Finding of Fact 8 in the amounts listed therein.

III. DEBARMENT

Section 5(a) of the Act provides for debarment of contractors who violate the Act. 41 U.S.C. § 354(a). A debarred contractor is barred from entering into contracts with the United States Government for a period of three years. *Id.* Debarment is presumed whenever a contractor is found to have violated the Act, unless the contractor demonstrates “unusual circumstances.” *Id.*; *see also* 29 C.F.R. §§ 4.188(a) and (b). Here, Respondents have failed to demonstrate unusual circumstances. Therefore, they shall be ineligible to enter into contracts with the United States government for a period of three years commencing on the date the Comptroller General of the United States adds Respondents to the list of debarred contractors. *See* 41 U.S.C. § 354(a).

ORDER

1. **Respondents are liable for \$71,652.39** in underpaid wages and benefits to the following employees in the amounts listed:

Lanfear, Beverly L.	\$1,665.29
Rogers, Iva Lou	\$1,240.09
Clark, Linda	\$12,187.96
Becerra, Diana	\$30,320.70
South, Jesse	\$7,087.90
Whitaker, Robert	\$19,150.45

2. Any amount which has been withheld from the contracts of Respondents shall be released for payment to the employees of Respondent for payment of underpaid wages and benefits.

3. Respondents shall pay such additional amount as is necessary to fully pay the amounts owed to the employees of Respondents.
4. **Respondents shall be debarred for a period of three years** from the date the Comptroller General of the United States includes their names on the list of contractors ineligible to receive contracts from the United States Government.

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ANNE BEYTIN TORKINGTON
Administrative Law Judge

NOTICE: To appeal, you must file a written petition for review with the Administrative Review Board (“ARB”) within 40 days after the date of this Decision and Order (or such additional time that the ARB may grant). *See* 29 C.F.R. § 6.20. The Board’s address is:

Administrative Review Board
United States Department of Labor
Suite S-5220
200 Constitution Avenue, NW
Washington, DC 20210

A copy of any such petition must also be provided to the Chief Administrative Law Judge, Office of Administrative Law Judges, 800 K Street, NW, Washington, DC 20001-8002. Your petition must refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on the ineligibility list shall also state the unusual circumstances or lack thereof under the Service Contract Act, and/or the aggravated or willful violations of the Contract Work Hours and Safety Standards Act or lack thereof, as appropriate.

The ARB’s Rules of Practice further require that the petitioner provide to the ARB an original and four copies of the petition and any other papers submitted to the ARB. 29 C.F.R. § 8.10(b). Service is to be in person or by mail. 29 C.F.R. § 8.10(c). Service by mail is complete on mailing, and the petition is considered filed upon the day of service by mail. 29 C.F.R. § 8.10(c). The petition must contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and the manner of service and the names of the person or persons served, certified by the person who made service. 29 C.F.R. § 8.10(d).

A copy of the petition is also required to be served upon the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210; the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210; the Federal contracting agency involved; and all other interested parties. 29 C.F.R. § 8.10(e).