



**Issue Date: 18 October 2012**

CASE NO.: 2011-SCA-00008/00009

*In the Matter of:*

E & S DIVERSIFIED SERVICES, INC.,  
MAYFIELD EVANS, BARRY EVANS,  
JACQUELINE EVANS, and WILLIE EVANS,  
Respondents.

### **DECISION AND ORDER DEBARING RESPONDENTS**

This case arises from a complaint filed by the Administrator of the Wage and Hour Division of the U.S. Department of Labor (“Administrator”) against Respondents E & S Diversified Services, Inc. (“E&S”), Mayfield Evans, Barry Evans, Jacqueline Evans, and Willie Evans, for alleged violations of provisions of the McNamara-O’Hara Service Contract Act (“SCA” or “Act”), 41 U.S.C. § 351, *et seq.*, as implemented by 29 C.F.R. § 4.188.

For the reasons set forth below, the Respondents are DEBARED from receiving federal contracts for a period of three years.

### **PROCEDURAL BACKGROUND**

The Petitioner, the Administrator of the Wage and Hour Division, filed a complaint on February 28, 2011, against the Respondents, E&S, Mayfield Evans, Barry Evans, Jacqueline Evans, and Willie Evans, seeking to debar them from receiving federal contracts because of violations of the Service Contract Act. Respondents timely filed an answer to the complaint on March 25, 2011.

This case was heard in Anchorage, Alaska, on October 25, 2011. The Petitioner’s counsel and counsel for the Respondents<sup>1</sup> both appeared and participated at the hearing. All parties were afforded a full opportunity to present testimony, offer documentary evidence, and submit closing briefs. At the hearing, I admitted into evidence Petitioner’s Exhibits (“PX”) 1 through 9, 11 through 13, and 21 through 26;<sup>2</sup> and Respondent’s Exhibits (“RX”) A through D, and F through I.<sup>3</sup> I additionally marked and admitted the Petitioner’s complaint as ALJ Exhibit (“ALJX”) 1, and the Respondents’ answer as ALJ Exhibit 2.

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<sup>1</sup> Whenever appropriate, E&S, Mayfield Evans, Barry Evans, Jacqueline Evans, and Willie Evans will be referred to jointly as “the Respondents.”

<sup>2</sup> The Petitioner withdrew Exhibits 10, 16, 17, and 18. (Hearing Transcript (“HT”), pp. 29-30.) Petitioner’s Exhibits 14, 15, and 19, were excluded. (HT, pp. 213, 216-17.)

<sup>3</sup> Respondents’ Exhibit E was excluded. (HT, p. 28.)

At the hearing, I set January 5, 2012, as the deadline for closing briefs. On January 4, 2012, the parties requested, and I granted, an extension to that deadline. Both closing briefs were sent on January 12, 2012, as agreed, and were received by my office on January 17, 2012.

### STIPULATIONS

The parties agreed to the following stipulations:<sup>4</sup>

1. E&S is a contractor under the SCA for the Eglin and Fort Stewart contracts, as those contracts are defined in the Administrator's pre-hearing statement;
2. E&S's Eglin and Fort Stewart contracts are subject to the SCA;
3. E&S made health and welfare benefit payments on the Eglin and Fort Stewart contracts to a third-party administrator or directly to the employee;
4. For the third quarter of 2008, E&S's health and welfare obligation on behalf of employees who worked on the Fort Stewart contract was \$17,921.47,<sup>5</sup> which E&S paid with a check in December 2009;
5. For the fourth quarter of 2008, E&S's health and welfare obligation on behalf of employees who worked on the Fort Stewart contract was \$21,220.05, which E&S paid with a check in December 2009;
6. For the first quarter of 2009, E&S's health and welfare obligation on behalf of employees who worked on the Fort Stewart contract was \$21,059.43, which E&S paid with a check in December 2009;
7. For the second quarter of 2009, E&S's health and welfare obligation on behalf of employees who worked on the Fort Stewart contract was \$24,328.83, which E&S paid with a check in December 2009;
8. Mayfield Evans, Barry Evans, and Jacqueline Evans are all responsible parties as that term is used in the SCA regulations;
9. Respondents cooperated during the investigation that led to the instant suit.

(Parties' Stipulated Facts, pp. 1-2.)

### ISSUES

The stipulated facts in this case establish violations of the Service Contract Act for late payment of required health and welfare benefits, since the parties agree that benefits were not paid into a bona fide fringe benefit plan until six months to a year (or more) after the quarter in which they were earned. *See* 41 U.S.C. § 351(a)(2) (payment of fringe benefits required); 29

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<sup>4</sup> I have not included the parties' proposed stipulation about the health and welfare obligations of E&S for the Eglin contract, as apparently the date was still disputed. (*See* Parties' Stipulated Facts, ¶ 12, n.1.)

<sup>5</sup> It should be noted that for the dollar amounts in the stipulations I have numbered 4-7, the parties have not included any payments that were made directly to employees. (*See* RX A, pp. 1-4, 27-30.) For example, E&S records show that its total health and welfare obligation for the Fort Stewart contract, for the third quarter of 2008, was actually \$24,490.41, which became \$17,921.47 only after some fringe benefits were paid to individual employees. (*See* RX A, pp. 1, 27.) Likewise, for the fourth quarter of 2008, at Fort Stewart, an obligation of \$28,577.12, was reduced to \$21,220.05 by direct payments of benefits (*see* RX A, pp. 2, 28); for the first quarter of 2009, at Fort Stewart, \$28,038.83 was paid down to \$21,059.43 in the same way (*see* RX A, pp. 3, 29); and for the second quarter of 2009, at Fort Stewart, a health and welfare benefit debt of \$27,732.13 had similarly shrunk to \$24,328.83 by the time the DOL got involved (*see* RX A, pp. 4, 30).

C.F.R. § 4.165(a)-(b) (it is a violation of the Act to pay fringe benefits late); 29 C.F.R. § 4.177(c) (benefits provided directly to employees must be paid on employee's regular payday, which must occur at least semi-monthly); 29 C.F.R. § 4.175(d) (in the alternative, payments to fringe benefit plans must be made at least quarterly); 29 C.F.R. § 4.171 (requirements to be a bona fide fringe benefit plan).

Any contractor who violates the Act is debarred from receiving government contracts for three years unless unusual circumstances are present. 41 U.S.C. § 354(a); 29 C.F.R. § 4.188(a).

Thus, the only remaining legal issue in this case is whether "unusual circumstances," as defined by the Act's implementing regulations, exist that can relieve E&S from the penalty of debarment. 29 C.F.R. § 4.188(b); 41 U.S.C. § 354(a). (HT, p. 32; Respondents' Closing Brief, p. 1; Petitioner's Closing Brief, p. 6.)

### FACTUAL BACKGROUND

E&S is a small company based in Anchorage, Alaska, which has performed government contracts since at least 1993. (*See* PX 22, p. 91; HT, pp. 149, 167.) E&S has around 25 permanent employees and primarily provides services to the U.S. government, though it does have some small, private-sector contracts. (HT, pp. 149, 168.) Mayfield Evans is president of E&S, Barry Evans oversees the contract bidding process, and Jacqueline Evans is the secretary, treasurer, and administrator for most day-to-day operations at E&S. (HT, pp. 123-25.) On corporate filings with the state of Alaska, Willie Evans is listed as a director of the company, as are Barry Evans, Jacqueline Evans, and Mayfield Evans. (Petitioner's Closing Brief, Appendix C.)<sup>6</sup>

#### *E&S Terminates its Plan*

Before the events at issue in this case, E&S met its health and welfare benefit obligations for contracts subject to the SCA, by paying the required amounts into a pension plan administered by a third party ("the Plan").<sup>7</sup> (*See* RX I, pp. 123-277; HT, pp. 127, 136.) However, at some point, E&S decided that it was no longer using the Plan enough to justify the \$200.00 monthly fee for maintaining the account. (HT, p. 130.) According to Jacqueline Evans's testimony at the hearing, the process of closing the Plan may have started as early as 2006, but was not completed until March of 2008, when the E&S board of directors passed a resolution terminating the Plan. (*Id.* at 130-32, 172; RX C, pp. 91-92.)

#### *E&S Wins Contracts at Eglin Air Force Base and Fort Stewart*

On June 2 and 3, 2008, E&S entered two new contracts with the Federal Government subject to the SCA, for commissary shelf-stocking services at Eglin Air Force Base and at Fort Stewart. (HT, p. 127; PX 1, p. 1; PX 4, p. 34.) These contracts required the payment of health and welfare benefits to contractors. (*See* HT, p. 133.) E&S knew it "needed to be able to pay the

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<sup>6</sup> The Petitioner's closing brief requested that I take judicial notice of Appendix C, and the Respondents did not object. (*See* Petitioner's Closing Brief, p. 13.)

<sup>7</sup> Because the company that administered this benefits plan changed its name over time, for clarity, I will refer to it as just "the Plan" whenever appropriate.

employees their health and welfare benefit,” but wanted to do so through the Plan, which it had unfortunately just closed in March 2008. (*Id.* at 133, 135.)

With no active third-party plan available, E&S had the option under the SCA of instead paying the fringe benefit amounts directly to its workers, *see* 29 C.F.R. § 4.177(c), yet E&S “did not do that right away.” (HT, p. 135.) Jacqueline Evans testified that she believed that if the company started paying these benefits directly to employees, it would not have the option of switching payments over to the Plan later. (HT, pp. 136, 183-84.) In that case, the employees “wouldn’t have the advantage of [] investment opportunities that the plan would – might offer them.” (*Id.* at 136.)

Instead, E&S “kept track of hours worked by employees to make sure [it could] determine exactly how much money was due to that employee once the plan got started.” (HT, p. 135; *see* RX A (E&S created charts of each employee’s hours and total benefits owed).) Jacqueline Evans claimed that E&S started holding these funds on “[d]ay one of the contract,” in the company’s payroll and general account, and that enough was set aside to pay its health and welfare obligations. (HT, pp. 136-37, 141.) In some cases, generally when an employee was fired, passed away, or made a special hardship request to E&S, the accumulated health and welfare benefits were paid directly to that employee. (*Id.* at 137-38, 160; *see* RX B (checks paying out benefits to workers).) E&S then deducted these payments from its records of the amounts still owed. (*See, e.g.*, RX A, pp. 27-30.)

It is not clear if employees were informed that E&S was holding the health and welfare funds itself. Ms. Evans testified that project managers were given benefits statements and that she answered questions about the funds for employees who asked, but she was unable to provide “exact details” about what employees were actually told about their benefits. (*See* HT, pp. 176-79.) At the hearing though, Ms. Evans did insist that after calling her for information about their benefits, some employees “said they didn’t want their money, they wanted it to remain in the retirement plan.”<sup>8</sup> (*Id.* at 137.)

#### *E&S Attempts to Restart the Plan*

E&S holding the benefit payments itself was apparently meant to be temporary, until the proper third-party Plan could be reactivated. (*See* HT, pp. 135, 137.) However, Jacqueline Evans did not start trying to reinstate the Plan until “after July 2008, I believe.” (*Id.* at 134.) At the hearing, Ms. Evans said that she had “some difficulties” in reinstating the Plan and with getting “established on [the Plan’s] web-base.” (*Id.* at 133-34.) Respondents submitted as evidence copies of emails between Jacqueline Evans and the Plan’s various representatives. (*See* RX D and G.) According to these, Ms. Evans received the necessary forms to enroll her employees on August 12, 2008, and confirmed on August 18, 2008, that she would provide employees with the enrollment paperwork that week. (RX G, pp. 102-04.)

From the available evidence, it is not possible to determine when E&S successfully reenrolled in the Plan. After the emails in August of 2008, which made reenrollment seem

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<sup>8</sup> Of course, the funds E&S was holding were not in a retirement plan, but in its own payroll and general accounts, waiting to be moved into a retirement plan at a later date. *See* 29 C.F.R. § 4.171 (requirements to be a bona fide fringe benefit plan, requirements which funds informally held in E&S’s own bank accounts did not fulfill).

imminent, there is no evidence of further contact with the Plan, either to pursue reenrollment or to make use of a reactivated account, until March 2009. On March 31, 2009, a representative from the Plan emailed E&S to inform it that the login information for its account had changed. (RX D, p. 95.) Two weeks later, on April 15, 2009, Jacqueline Evans responded to that email to say that E&S had “not received any paperwork showing enrollment of employees.” (*Id.*) When this produced no response, on April 30, 2009, Ms. Evans emailed a different Plan representative, the one she had spoken to last on August 18, 2008, asking him for a list of E&S employees enrolled in the Plan, so that E&S could start making contributions. (RX G, p. 105.) This request was forwarded to Client Services for the Plan and a statement of the 2009 Plan policies was executed that same day. (*See* RX I, pp. 266-77; RX G, p. 101.)

It appears that Ms. Evans was not informed about this, as she emailed the Plan representative again on May 28, 2009, requesting that he call her as neither her April email nor her phone messages had been returned. (RX G, p. 105.) The next day, he responded and after some more back and forth, Ms. Evans was connected to the right department. (RX D, p. 93; RX G, p. 101.) Finally, on June 1, 2009, the Plan sent E&S full plan documents and forms.<sup>9</sup> (RX I, p. 125; HT, p. 134.)

#### *The U.S. Department of Labor Investigates*

In August of 2009, E&S was contacted by Sharla Revelle, a representative of the U.S. Department of Labor. (HT, pp. 142-44.) Ms. Revelle’s investigation focused on health and welfare benefits that E&S paid directly to some of its workers at Eglin and Fort Stewart.<sup>10</sup> E&S provided the information she requested. (RX B, pp. 53-70, 81-83.) Ms. Evans’s final contact with Ms. Revelle was December 21, 2009, when E&S sent the DOL a check for \$720.96 in benefits owed to four employees who could not be located. (*Id.* at 71-72; HT, p. 144.)

#### *E&S Begins to Make Payments to the Plan*

Despite the Plan being fully reactivated by June 1, 2009, E&S did not attempt to pay the Plan any of the health and welfare funds it had retained for its employees until August 31, 2009. (RX I, p. 125; PX 2, p. 28; HT, pp. 127, 139.) However, due to errors in writing the checks (*see* PX 2, pp. 28-29; HT, p. 137), E&S did not *succeed* in making any payments to the Plan until October 28, 2009, when two checks were finally deposited: one for \$44,348.89 in benefits owed

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<sup>9</sup> Therefore, the Plan was definitely active by June 1, 2009. However, on the available evidence, it is possible that the Plan was actually reopened (perhaps many months) earlier, after which point, E&S was merely having technical issues utilizing web-based features of the Plan. (*See* HT, p. 134 (Ms. Evans: “I tried to get it established on their web-base. I couldn’t get that going. Our computers weren’t compatible.”).) While Ms. Evans did not have documents confirming enrollment, it is conceivable that these documents already existed on E&S’s web-account and that Ms. Evans was just not able to access them. The best evidence for this theory is the email from the Plan on March 31, 2009, informing E&S that its login information had changed. (*See* RX D, p. 95.) It seems unlikely that such an email would be sent unless E&S actually had an active Plan account at that time. Without better evidence though, the only firm conclusion that can be reached is that E&S’s Plan was reinstated no later than June 1, 2009.

<sup>10</sup> For example, Verna Daley worked for E&S at Fort Stewart in September 2008, earning \$136.73 in health and welfare benefits (RX A, p. 1), which E&S attempted to pay to her directly (*see id.* at 27 (the name “Verna Daley” is blacked out and subtracted from the total); RX B, pp. 74 (check unclaimed after attempts to send it to her via certified mail in July 2009), 77). Eventually, it was determined that Verna Daley could not be located and her benefits were paid to the DOL to hold. (RX B, pp. 71-72.)

to employees at Eglin from July–September 2008; and one for \$44,455.29 owed to Eglin workers for their October–December 2008, benefits.<sup>11</sup> (RX H, p. 117; PX 7, p. 58.)

On December 22, 2009, E&S reissued the check it had attempted to pay in August, this time with the proper company name for the recipient. (PX 2, pp. 28-29; HT, p. 137.) This payment was for \$84,529.78, representing the health and welfare benefits still owed to employees at Fort Stewart, for their work from July of 2008, through June of 2009,<sup>12</sup> and was deposited by the Plan on December 30, 2009. (PX 2, pp. 28-29; RX H, p. 117.)

#### *Valerie Word-Thompson Takes Over the Investigation*

In early 2010, Valerie Word-Thompson, a different DOL investigator, took over from Ms. Revelle and requested more documents from E&S, which were provided. (HT, pp. 65-66, 145-46; RX A, p. 32.) Ms. Revelle had focused on the benefits E&S paid directly to workers, but Ms. Word-Thompson looked into the amounts E&S continued to hold in its own accounts. By “February or March” of 2010, Ms. Word Thompson informed E&S that \$319,103.55 in health and welfare benefits for the Eglin and Fort Stewart contracts had not been paid on time<sup>13</sup> and that a certain amount of this total deficit was still outstanding. (HT, pp. 146-47; RX H, pp. 117.)

#### *E&S Made Further Payments to the Plan*

In the meantime, E&S had made an additional deposit into its Plan account on February 18, 2010. (RX H, pp. 117-18.) This was a payment for health and welfare benefits owed to workers at Fort Stewart for the fourth quarter of 2009, and it amounted to \$26,775.55.<sup>14</sup> (*Id.*)

According to Ms. Word-Thompson, this left only the benefits amounts for July–September 2009, at Fort Stewart, and for July–December 2009, at Eglin, still unpaid. (HT, pp. 147-48.) E&S addressed this with a check dated March 16, 2010, for \$27,345.69 covering the benefits for Fort Stewart workers from July–September 2009, which was deposited in the Plan on April 1, 2010.<sup>15</sup> (RX H, pp. 177, 122.) A final payment of \$91,648.35, representing benefits for workers at Eglin from July–December 2009, was deposited into the Plan on April 21, 2010.<sup>16</sup>

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<sup>11</sup> Oddly, neither these checks nor these benefits amounts are mentioned in the parties’ proposed stipulated facts or their closing briefs, despite constituting a sizeable portion of the \$319,103.55 the DOL eventually found that E&S had paid late. (*See* RX H, p. 117.)

<sup>12</sup> The total of \$84,529.78 was the sum of payments for four earlier quarters: \$17,921.47 owed for July–September, 2008; \$21,220.05 owed for October–December, 2008; \$21,059.43 owed for January–March, 2009; and \$24,328.83 owed for April–June, 2009. (PX 2, p. 28; RX A, pp. 27-30; Parties’ Stipulated Facts, ¶¶ 4-11.)

<sup>13</sup> From the record available, it appears that Ms. Word-Thompson did not consider the benefits that were owed to workers at Eglin for January–June, 2009. (*See* RX H, p. 117.) While E&S kept records of the amounts it owed for those quarters, I can find no evidence that these amounts were ever paid to the Plan. (*See* RX A, pp. 13-18 (\$44,777.45 owed for January–March, 2009; \$43,690.32 owed for April–June, 2009).) These quarters are also unaddressed by the parties’ proposed stipulated facts and their closing briefs.

<sup>14</sup> This period and late payment were also not addressed in the proposed stipulated facts or closing briefs, despite being included in Ms. Word-Thompson’s calculations of late payments. (*See* RX H, p. 117.)

<sup>15</sup> This time period and late payment were also not addressed in the proposed stipulated facts or closing briefs, despite being included in Ms. Word-Thompson’s calculations of late payments. (*See* RX H, p. 117.)

<sup>16</sup> A check for this amount was originally written on March 2, 2010, but was drawn to the wrong recipient. (*See* RX H, p. 121.) It was reissued on March 19, 2010, but again, the recipient name was wrong. (*See id.* at 119.) A final

(*Id.* at 117, 119-21; HT, p. 165; RX A, pp. 19-26; PX 6, pp. 49-54.)<sup>17</sup> According to Jacqueline Evans, this left E&S current on its payments to the Plan.<sup>18</sup> (*See* HT, pp. 147-48.)

### *The Hearing*

Eventually, the case came before me for a hearing on October 25, 2011. Ms. Word-Thompson and District Director Donna Hart both testified for the Administrator and Jacqueline Evans was a witness for the Respondents.

At the hearing, much of the testimony focused on E&S's alleged violations of the SCA before 2008. Ms. Hart said that she had examined the Wage and Hour Division's database and found evidence of multiple previous investigations of E&S by the DOL. (HT, pp. 85-87, 110-12.) From these files, she found that E&S was at fault in seven prior violations and had made about \$300,000.00 in back payments. (*Id.* at 87.) The majority of the records Ms. Hart viewed in this database were not submitted as evidence here and Ms. Hart could not remember many specifics. (*Id.* at 110-12.) She did remember, however, that:

One of [the violations] for example, was with respect to the employment of apprentices. Those apprentices were not bona fide apprentices under a registered plan and therefore there was a violation of the SCA when they were not paid appropriately. There was another violation with respect to salaried janitors, where they were not paid any fringe benefits at all. There were violations with respect to non-payment of fringe benefits on certain contracts. And there were violations of late payments for fringe benefits as well.

(*Id.* at 85.) Ms. Hart also expressed doubts about E&S's commitment to future compliance with the SCA, as the company had made similar promises in "at least seven" instances of prior violations. (*Id.* at 90.)

A central point of controversy at the hearing, was Petitioner's Exhibit 21, which Ms. Word-Thompson created and which purported to show E&S's history of prior violations. (HT, pp. 35, 39.) Ms. Word-Thompson reported that she got the data about E&S's payments for 1993–2000, from "Nancy Pool[e] from the Benefits Health and Welfare." (HT, p. 35.) She could not recall where Ms. Poole worked or what her job title was,<sup>19</sup> but said that E&S had told her to

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check dated April 15, 2010, written to the correct company, did not make it into the Plan account until April 21, 2010. (*See id.* at 117, 120.)

<sup>17</sup> This payment was mentioned in the stipulated facts the parties proposed, but there was apparently a dispute about whether the period covered was in 2008, or 2009, on top of which, the proposed stipulation stated that the quarters were in "2010." (*See* Parties' Stipulated Facts, ¶ 12, n.1.) From the other records, it appears plain that the payment was to cover the amounts owed for the third and fourth quarters of 2009, at Eglin. (*See* RX A, pp. 19-26.)

<sup>18</sup> The Administrator apparently agreed with this, stating in the closing brief that "Monies due have been repaid, albeit untimely." (Petitioner's Closing Brief, p. 10.) The Administrator's complaint also stated that "Respondents have since made all health and welfare payments on behalf of Eglin and Fort Stewart contract service employees and no monetary amount is sought." (Complaint, p. 3.)

<sup>19</sup> This turned out to be an issue of memory, not an indication of a dubious source (*contra* HT, pp. 41-42; Respondents' Closing Brief, pp. 10-12), as E&S's own evidence establishes that Nancy Poole was the Retirement Plan Services Consultant at the Plan and a qualified source for this information. (*See* RX I, pp. 124, 126 (identifies clearly Ms. Poole's connection to the Plan); RX H, pp. 119-20 (E&S addressed its benefits payments to Ms. Poole's attention).)

contact Ms. Poole for information about the Plan, and that when she called Ms. Poole, the response was, “Yes. I will be the person you need to speak with and I can get that information for you.” (*Id.* at 41-42, 46.) Ms. Poole then gave Ms. Word-Thompson the information in PX 21 over the phone. (*Id.* at 52.) Ms. Word-Thompson never saw the records this information was drawn from and could not explain the pattern of payments. (*Id.* at 52, 55, 57.)

Finally, Jacqueline Evans provided her interpretation of several documents the Administrator submitted as evidence that E&S had committed prior violations. In her opinion, Petitioner’s Exhibit 11 was a check written to cover a “technical violation” that occurred when the government raised the rate for the benefit payment, yet did not authorize E&S to pay that higher rate until sometime later. (HT, p. 152.) She explained Petitioner’s Exhibit 12 similarly asserting that if the check was for something other than an authorization delay, she assumed there would have been a document stating that E&S was “in violation.” (*Id.* at 152-53.) Ms. Evans believed that the checks mentioned in Petitioner’s Exhibit 13 were for this kind of government back-dated payment too, in that case, to employees who could no longer be located. (*Id.* at 154.) Lastly, she insisted that Petitioner’s Exhibit 20, concerned money that “was not a violation, it was paid but it just didn’t go into the pension plan. It started – I think it started two months later.” (*Id.* at 155.) However, she said she did not have the right records in front of her to really know. (*See id.* at 156.)

For the current violations, much of the relevant testimony has already been addressed. In addition, Ms. Word-Thompson testified that Jacqueline Evans had cooperated with the investigation, was not evasive, and had taken the matter seriously. (HT, pp. 65-67.) Ms. Evans herself claimed it was “never” E&S’s intention to not pay its employees or to “cheat” them. (*Id.* at 141, 150.) She also said that if E&S was debarred, it would “most likely dissolve” as a company, and that its current employees would “probably be unemployed.” (*Id.* at 149-50.)

## ANALYSIS AND FINDINGS

### I. Unusual Circumstances

Under the Service Contract Act, “any person or firm found ...to have violated the Act shall be declared ineligible to receive further Federal contracts unless the Secretary recommends otherwise because of unusual circumstances.” 29 C.F.R. § 4.188(a); 41 U.S.C. § 354. The Secretary’s discretion to grant such relief is constrained, making “unusual circumstances” only a limited safety valve to an otherwise strict statute. *See* 29 C.F.R. § 4.188(b)(2); *R & W Transp., Inc.*, ALJ No. 2003-SCA-024, ARB No. 06-048, slip op. at 8 (ARB Feb. 28, 2008) (the debarment provision “is a particularly unforgiving provision of a demanding statute. A contractor seeking an ‘unusual circumstances’ exemption from debarment must, therefore, run a narrow gauntlet.”). While debarment is a severe penalty, Congress intended that it be the norm for violating contractors as opposed to the exception. *Summitt Investigative Service, Inc. v. Herman*, 34 F. Supp.2d 16, 19 (D.D.C. 1998); *see also Vigilantes, Inc. v. U.S. Dep’t. of Labor*, 968 F.2d 1412, 1418 (1st Cir. 1992) (“only the most compelling of justifications should relieve a violating contractor from that sanction.”)

The existence of “unusual circumstances,” is determined on a case-by-case basis, “in accordance with the particular facts present.” 29 C.F.R. § 4.188(b)(1). Negligence or ignorance

of contract provisions cannot excuse violations, nor can belatedly paying amounts owed under the Act and promising to comply better in future. 29 C.F.R. § 4.188(b)(1)-(2); *KSC-Tri Systems USA, Inc.*, ALJ No. 2006-SCA-20 (ALJ Aug. 7, 2007). “Debarment is designed to break down a chain of non-compliance and to force employers to take the labor regulations seriously,” restricting the award of government contracts to only responsible bidders. *Hugo Reforestation, Inc.*, ALJ No. 1997-SCA-20, ARB No. 99-003, slip op. at 13 (ARB Apr. 30, 2001) (internal citation and quotation omitted); 29 C.F.R. § 4.188(b)(6). Only in cases where the violation is shown to have been minor and inadvertent, can relief be granted. 29 C.F.R. § 4.188(b)(2); see *Fed. Food Serv., Inc. v. Donovan*, 658 F.2d 830, 834 (D. C. Cir. 1981) (“we do not suggest that a ‘pure heart’ and a lack of willfulness are sufficient to show unusual circumstances,” only that the “use of debarment against innocent and petty violations was not intended.”)

The regulations place the burden of establishing the existence of “unusual circumstances,” squarely on the violator. 29 C.F.R. § 4.188(b)(1). *In fact*, “debarment is presumed once violations of that Act have been found, *unless* the violator is able to show the existence of ‘unusual circumstances’ that warrant relief from SCA’s debarment sanction.” *Hugo*, ARB No. 99-003, slip op. at 8-9 (emphasis added). To show “unusual circumstances,” the violator must establish the “absence of aggravating factors and the presence of mitigating factors.” See 29 C.F.R. § 4.188(b)(3)(i)-(ii); *Dantran, Inc. v. U.S. Dep’t. of Labor*, 171 F.3d 58 (1st Cir. 1999). This has developed into a three-part test, which the violator must satisfy every stage of to be eligible for relief from debarment. *Hugo*, ARB No. 99-003, slip op. at 13.

In essence, the first stage of this test requires showing that the violations were not ones the contractor can be considered culpable for, as culpable (let alone intentional) violations are aggravating factors that require debarment. 29 C.F.R. § 4.188(b)(3)(i); *Dantran*, 171 F.3d 58. Evidence of serious prior violations also places the contractor beyond the range of relief, since presumably the past citations put them on notice of their obligations under the Act. 29 C.F.R. § 4.188(b)(3)(i); *KSC-Tri Systems*, ALJ No. 2006-SCA-20, slip op. at 30; *Hugo*, ARB No. 99-003, slip op. at 11 (violations were culpable “given [employer]’s history of violations, his repeated opportunities to learn and abide by the law, and his failure to do so when he knew what was required”).

In the second stage, the contractor must establish the following mitigating prerequisites to relief: “[a] good compliance history, cooperation in the investigation, repayment of moneys due, and sufficient assurances of future compliance.” 29 C.F.R. § 4.188(b)(3)(ii).

If both of the initial steps are satisfied, a more diffuse set of considerations are weighed in the third step. These include: “the contractor’s efforts to ensure compliance, the nature, extent, and seriousness of any past or present violations, including the impact of violations on unpaid employees,” whether the contractor had been investigated for violations in the past, and whether current liability “was dependent upon resolution of a bona fide legal issue of doubtful certainty.” 29 C.F.R. § 4.188(b)(3)(ii). Failure at any point of this test ends the analysis, without the need to consider the remaining steps. *Hugo*, ARB No. 99-003, slip op. at 13.

Here, the Respondents appear to underestimate the gravity with which the law looks on their violations. The Respondents’ effort at the hearing was invested entirely in attacking the Petitioner’s evidence, rather than in forwarding Respondents’ own claims for “unusual

circumstances,” as required by the Act. 29 C.F.R. § 4.188(b)(1). In fact, the Respondents went as far as to suggest a directed verdict, because the Petitioner had allegedly produced inadequate evidence of prior violations. (HT, p. 223.) This request ignores the fact that even if the Petitioner produced no such evidence, the Act requires the Respondents’ debarment, unless the Respondents themselves proved that they deserve relief. 29 C.F.R. § 4.188(b)(1); *Hugo*, ARB No. 99-003, slip op. at 8-9, 12 (“once the SCA violations were established, debarment ... would have been appropriate even if the Wage and Hour Division had presented no evidence concerning [employer’s] past conduct”). Showing “unusual circumstances” is a demanding burden, and I find that the Respondents have failed to meet it. Because of the seriousness of the consequences of debarment, I will explain my reasoning at each stage of the analysis, despite failure at any of the three steps being sufficient basis for my decision. *Id.* at 13.

#### A. Step One: Culpability

Again, the first step of unusual circumstances analysis looks at whether the respondent’s violations of the Act were willful or culpable. 29 C.F.R. § 4.188(b)(3)(i); *Dantran*, 171 F.3d 58. The existence of previous violations can be a telling factor. 29 C.F.R. § 4.188(b)(3)(i); *KSC-Tri Systems*, ALJ No. 2006-SCA-20, slip op. at 30; *Hugo*, ARB No. 99-003, slip op. at 11.

In this case, I find that the Respondents’ violations were culpably negligent, bordering on willful. The Respondents knew that to comply with the Act, they needed to either pay the health and welfare benefits into a benefit plan or pay them to employees. (HT, pp. 133, 135.) Yet the Respondents instead chose to set aside these funds only on paper, not paying them into a legitimate benefit plan until many months after they were due. (*E.g. id.* at 135-36; RX H, p. 117.) They had no reasonable reason to believe this was adequate fulfillment of their obligations under the SCA. This is the definition of “culpable neglect to ascertain whether practices are in violation” or “culpable disregard of whether they were in violation or not.” 29 C.F.R. § 4.188(b)(3)(i)-(4) (“A contractor has an affirmative obligation to ensure that its pay practices are in compliance with the Act, and cannot itself resolve questions which arise, but rather must seek advice from the Department of Labor”).

The Respondents claimed that they held the funds themselves out of a desire to preserve the possibility of investment for their employees. (HT, p. 136.) However, this rings somewhat hollow, given that the Respondents did not even attempt to reactivate their plan until almost two months into the Eglin and Fort Stewart contracts. (*Id.* at 134; RX G.) Further, once, after great delay, the Plan was definitely running again, the Respondents made no effort to pay in back benefits for eight weeks, and did not take sufficient reasonable care to successfully deposit any funds in the account until another two months after that. (PX 2, pp. 28-29; RX H, p. 117.)

In addition, the current violations were not a minor mistake. The Respondents failed to make timely health and welfare payments repeatedly over an almost two-year period. *See Summitt Investigative Service, Inc.*, ALJ No. 1994-SCA-031, ARB No. 96-111, slip op. at 13 (ARB Nov. 15, 1996) (“continuing, repeated and quite serious” violation of the SCA when payment violations kept recurring) (internal citations omitted). In total, I calculate that a

minimum of \$407,571.32 in benefits was delayed in violation of the Act.<sup>20</sup> This is very serious. *See Vigilantes*, 968 F.2d 1412 (where deficiencies of only \$70,000.00 were considered serious).

The culpability of Respondents' actions here is plain, given how easily the violations could have been avoided. *Fed. Food*, 658 F.2d at 834 (for culpability, "must consider the particular circumstances of the business under review for example, ... the likelihood that it could have avoided its violations with proper management"). While Ms. Evans resisted admitting it on the stand, in the spring of 2008, Respondents were obviously aware that they were bidding on two major contracts that would require health and welfare payments to a legitimate plan. (*See* HT, p. 184.) Nevertheless, E&S's board of directors resolved to terminate the Plan, leaving the company without an active pension plan to pay benefits into when they won the Eglin and Fort Stewart contracts less than three months later. (RX C, pp. 91-92; PX 1, p. 1; PX 4, p. 34.) If Ms. Evans's claim that she had been working to terminate the Plan since 2006 is true, that is all the more evidence that any reasonable person would have realized that opening and closing Plan accounts was a lengthy process and not to be done lightly. (HT, p. 172.)

Moreover, the initial mistake in terminating the pension plan might have been remedied if the Respondents had taken their responsibilities under the Act seriously enough to make reactivation of the account a priority. Ms. Evans's efforts at getting the Plan account running were lackluster at best. She did not even contact the Plan until a couple months after winning the Eglin and Fort Stewart contracts (*see* HT, p. 134), and her correspondence with the Plan after that shows frequent gaps of a few weeks to a few months where she did nothing to follow up (*see, e.g.*, RX G, p. 102 (August 18, 2008: set to enroll employees); RX D, p. 95 (then no contact with Plan until March 31, 2009; emailed plan on April 14, 2009, seeking confirmation); RX G, pp. 101-02 (Ms. Evans did not follow up on the April 14 email until two weeks later)). There may have been difficulties in reaching the correct person at the Plan or in getting responses, but compliance with the Act was the Respondents' responsibility and there were other methods of compliance the Respondents could have pursued (such as direct payment to employees) that did not require the Plan's cooperation. *See* 29 C.F.R. § 4.177(c).

Turning to the Respondents' history of previous violations, I quite agree that Ms. Word-Thompson's evidence in Petitioner's Exhibit 21, is not convincing. While Nancy Poole is a qualified and credible source of that information,<sup>21</sup> a string of numbers read over the phone, unsupported by documentation or even an explanation of what precisely the numbers indicate, is not good evidence. (HT, pp. 52, 55, 57.) I also find Petitioner's Exhibits 11, 12, 13, and 20,

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<sup>20</sup> Ms. Word Thompson found that \$319,103.55 was paid late (RX H, p. 117); an additional \$88,467.77 owed to Eglin employees for the first two quarters of 2009 may not yet have been paid even now (*see* RX A pp. 13-18); and the majority of payments made directly to employees also appear to have been untimely under the Act, despite being paid less late than benefits E&S retained for eventual payment into the Plan (29 C.F.R. § 4.177(c) (benefits provided directly to employees must be paid on employee's regular payday, which must occur at least semi-monthly); *see, e.g.*, RX B, p. 36 (benefits owed to a single employee for work from July 2008, through July 2009, not paid until October 28, 2009)).

<sup>21</sup> Despite the Respondents' alleged doubts about Ms. Poole's connection to the Plan (*see* HT, pp. 41-42; Respondents' Closing Brief, pp. 10-12), E&S's own evidence establishes that Nancy Poole was the Retirement Plan Services Consultant at the Plan and was a qualified source for this information. (*See* RX I, pp. 124, 126 (identifies clearly Ms. Poole's connection to the Plan); RX H, pp. 119-20 (E&S addressed its benefits payments to Ms. Poole's attention).) In fact, I would assume that it was these qualifications that led E&S to mention her to Ms. Word-Thompson as the person at the Plan to contact. (HT, p. 41.)

underwhelming. I cannot believe that these documents were really the best evidence in the Wage and Hour Division's files, as not one of them shows on its face a meaningful prior violation. However, even if I set those exhibits entirely aside, the Respondents have not defeated District Director Hart's testimony about the prior violations she discovered in her research. In a similar case, the ARB found that even without documents, the testimony of a DOL official who looked through records of previous investigations was adequate evidence of aggravating prior infractions. *See Hugo*, ARB No. 99-003, slip op. at 12.

For all of these reasons, I find that the Respondents here have failed at the very first stage to make a case for unusual circumstances. Most of their arguments totally ignored the fact that it was Respondents' own obligation "to produce evidence supporting their contention that the SCA violations in the instant case were not willful, deliberate, or of an aggravated nature." *Hugo*, ARB No. 99-003, slip op. at 12; 29 C.F.R. § 4.188(b)(1). The Respondents managed to challenge some of the Petitioner's weaker evidence in a meaningful way, but they failed to present any plausible explanation for how these serious repeated violations could have been inadvertent, innocent, or in any way not the kind of aggravated, culpable acts Congress intended to punish through debarment.

For the sake of thoroughness, I will continue my analysis of the failings of the Respondents' case through the remaining two elements.

*B. Step Two: Compliance History, Cooperation, Repayment, Future Assurance*

At the second stage of the unusual circumstances analysis, the contractor needs to present evidence of mitigating circumstances, such as a good "compliance history, cooperation during the investigation, and prompt repayment of sums owed," as well as sufficient assurance of future compliance with the Act's requirements. *Dantran*, 171 F.3d at 73; 29 C.F.R. § 4.188(b)(3)(ii).

As already discussed, the testimony of the District Director established that E&S does not have an unblemished compliance history. (HT, pp. 85-87.) Given that the company's previous assurances of compliance did not prevent the current serious violations, the Respondents seem shaky on that point as well. (*Id.* at 90.) On the other hand, there is evidence that the Respondents did cooperate with the DOL investigation. (*Id.* at 65-67.) The parties have in fact stipulated to that being the case. (Parties' Stipulated Facts, ¶ 14.)

Most damaging to the Respondents' attempts to show mitigating circumstances, however, is their failure to promptly repay sums owed to their employees. Ms. Evans claimed that E&S had sequestered the funds owed to its employees for health and welfare benefits since "day one" of the Eglin and Fort Stewart contracts. (HT, p. 137.) This seems unlikely since the Respondents did not pay the owed amounts into the Plan when it was reactivated and, in fact, did not even begin to make payments until the Wage and Hour Division investigated. (*See id.* at 134 (Plan definitely active again by June of 2009), 144 (Ms. Evans thought that the DOL investigation started in August of 2009); PX 2, p. 28 (first payment to Plan not attempted until August 31, 2009).) Moreover once the total amount E&S owed the Plan was finalized by Ms. Word-Thompson, final payment was still delayed another two months. (*See* HT, pp. 146-47 (E&S informed of amount owed in February or March of 2010), 165 (Plan not made current until

“April 21, 2010”).) If those funds had, in fact, been set aside, there should have been no delay whatsoever.

Finally, despite the statements of the Respondents and the Petitioner (*see* HT, pp. 147-48; Petitioner’s Closing Brief, p. 10; Complaint, p. 3), I can find no evidence that the Respondents have actually paid the Plan all the health and welfare benefits they owe for the period of this investigation. While the record contains copies of the checks, or at least records of payment, for the \$319,103.55 Ms. Word-Thompson decided that the Respondents owed (RX H, pp. 117, 118, 120, 122; PX 7, p. 58; PX 2, p. 29), there is no indication that the additional \$88,467.77 the Respondents owe employees who worked at Eglin in the first two quarters of 2009 (*see* RX A, pp. 13-18), was ever paid into the Plan. These amounts were also not mentioned by the stipulations or in any closing brief or other arguments. Because it is possible that this payment was made and no evidence was offered because there was no dispute, I will not order any relief associated with this apparent underpayment.

For these reasons, there is only faint mitigation available to boost the Respondents’ claims of unusual circumstances. Obviously merely cooperating with the investigation and belatedly paying most of the benefits owed cannot be enough to excuse the serious violations of the Act that took place in this case. *Cf. Hugo*, ARB No. 99-003, slip op. at 13 (belated back pay and promising future compliance is “no explanation at all” for SCA violations). Such a low bar would only perpetuate non-compliance, in direct contravention of the Congressional intent behind the debarment provision. *See id.*; 29 C.F.R. § 4.188(b)(2).

*C. Step Three: Past Investigations, Reasonable Mistake, Effort to Prevent, Impact of Violation on Employees*

Lastly, I have examined the Respondents’ qualifications for relief under step three. Again, the final step of the analysis considers many factors, “including whether the contractor has previously been investigated for violations of the Act, whether the contractor has committed recordkeeping violations which impeded the investigation, whether liability was dependent upon resolution of a bona fide legal issue of doubtful certainty.” 29 C.F.R. § 4.188(b)(3)(ii). It is also important to look at, “the contractor’s efforts to ensure compliance, the nature, extent, and seriousness of any past or present violations, including the impact of violations on unpaid employees, and whether the sums due were promptly paid.” *Id.*

As discussed earlier, there were numerous previous investigations of E&S, but there was no indication of recordkeeping violations impeding those investigations. (*See* HT, pp. 85-87.) Though details about past violations are limited, the current violations were decidedly serious and repeated and could have easily been avoided with reasonable forethought and prudent management. (*See* “Step One: Culpability.”)

There was also no bona fide legal issue of doubtful certainty here, as the Respondents were aware of the two legitimate methods of paying health and welfare benefits and simply chose to alter the arrangement because of other considerations. (*See* HT, pp. 133 (knew needed to pay fringe benefits), 135 (knew did not have a formal plan and about alternative of paying employees directly), 136 (did not pay employees directly because wanted them to “have the advantage” of the supposed investment benefits).) While the Respondents’ closing brief claims

that “good faith” motivated their actions (*see* pp. 4-6), this seems to mean only that it was not the Respondents’ specific intent to avoid paying its employees or to “cheat” them. (*see* HT, pp. 141, 150). Looking out for the interests of employees is commendable, but through the Service Contract Act, Congress made clear its expectations for how fringe benefits payments should be handled. A contractor’s good intentions are no substitute for compliance with the law. The Respondents here have stipulated to their violations of the Act and have made no case for a legally reasonable mistake underlying their actions.

The only truly new factor for consideration at this stage is the impact of the violations on employees. The Respondents’ novel argument is that, due to the financial crash in late 2008, the employees were actually better off because their benefits were not paid into a pension plan. (Respondents’ Closing Brief, pp. 8, 16; Respondents’ Pre-Hearing Statement, p. 5; HT, pp. 164-65.) According to numbers the Respondents advance, this choice fortuitously preserved the employee funds from a 20% decrease in value, assuming they had been invested in a way tied to the market index. (Respondents’ Closing Brief, p. 8; *see* RX F.) If the Act only allowed employers to invest benefit funds in such a plan, perhaps, through the purest luck, Respondents’ choice might have mitigated the damage to employees. However, the Respondents also rejected the Act’s alternative option of paying benefits directly to employees. (*See, e.g.*, HT, pp. 135-36.) If E&S had done that, the employees could have invested their benefits themselves, either in a savings account earning interest, or in purchases they valued (without needing to make a special request to their employer (*see id.* at 138)), or even in buying gold, which gained over 20% in value during the period the funds were withheld by E&S.<sup>22</sup> If Respondents want credit for avoiding the possible negative performance of the pension plan, they must also accept responsibility for depriving employees of the opportunity to invest their own funds more profitably. Since many employees earned thousands of dollars in benefits during the period at issue (*see, e.g.*, RX A), without doubt, the Respondents’ choice to withhold that money had a considerable impact on the employees.

I would also point out that the Respondents claimed in their closing brief and pre-hearing statement that employees were better off with “cash and interest” than they would have been with a pension plan. (Respondents’ Closing Brief, p. 16; Respondents’ Pre-Hearing Statement, p. 5.) Yet, from the records provided, I see no evidence that employees were paid interest for the period where their benefits funds were withheld. The checks in evidence here appear to reflect only amounts calculated by straight multiplication of the hourly rates by hours worked per employee.<sup>23</sup> The implication then would be that E&S itself retained any interest the earmarked benefit funds earned when in the Respondents’ general and payroll accounts. (HT, p. 136.) If Respondents materially profited, even in a small way, from their violation of the Act, that would have an additional negative impact on their plea for leniency.

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<sup>22</sup> See <http://www.usagold.com/reference/prices/history.html> (price per ounce July 1, 2008, was \$937.50; April 21, 2010, \$1,143.00, roughly a 22% increase).

<sup>23</sup> For example, Jennifer Babble earned \$2,960.07 in health and welfare benefits between August of 2008, and July of 2009. (*See* RX B, p. 38; RX A, pp. 1-4.) She had for instance earned \$108.54 in August of 2008, by working 33.5 hours at a rate of \$3.24 an hour in benefits. (RX A, p. 1.) Yet, when she was finally paid these benefits a year later, by a single check on August 31, 2009, her payment for August 2008, remained \$108.54, with no addition of interest at all. (*See* RX B, p. 38.) It was the same for all of her benefits payments covered by this check, and from a cursory review of other records, appears to have been the case for all belated benefits payments made by the Respondents.

Ultimately, because the Respondents failed to make their case for “unusual circumstances” at the two initial steps of the analysis, step three is moot. However, if the case had been strong enough to reach this final stage, on the evidence presented, I think I would be justified in viewing the Respondents’ actions unfavorably. Indeed, the Respondents’ argument about the performance of the stock market excusing their withholding of benefits presents such “a basic misunderstanding of the purpose and principles of the SCA” that, like the court found in *Summitt Investigative*, it raises doubts that the Respondents truly understand what they are promising to comply with in the future. ARB No. 96-111, slip op. at 13. That, in turn, diminishes the credibility of those promises.

I, therefore, find that the Respondents have failed to make a persuasive case for “unusual circumstances” at each of the three steps of analysis. In the absence of unusual circumstances, the Act requires the Respondents’ debarment from receiving federal contracts for three years. 29 C.F.R. § 4.188(a). While this is a serious penalty, on the facts of the case, I find that it is the penalty Congress wanted imposed in circumstances like these.

## II. Responsible Parties

Any “party responsible” for violations of the Act is rendered liable. 41 U.S.C. § 352(a); 29 C.F.R. § 4.187(e). Jointly liable parties include the company itself and its corporate officers who have a responsibility for control of the corporate entity and its compliance with the Act. 29 C.F.R. § 4.187(e)(1)-(3); *Rasputin, Inc.*, ALJ No. 1997-SCA-32, ARB No. 03-059, slip op. at 3 (ARB May 28, 2004) (term “party responsible” includes corporate officers and owners, as well as individuals “responsible for a service contractor’s performance of a contract”); *Hugo*, ARB No. 99-003, slip op. at 14 (applicable case precedent “squarely places upon corporate officials an affirmative obligation to ensure that their companies adhere to their statutory obligations under the SCA”).

Here, the parties have stipulated that Mayfield Evans, Barry Evans, and Jacqueline Evans are “responsible parties” under the Act. (Parties’ Stipulated Facts, ¶ 13.) These individuals and E&S, the company itself, are jointly liable. 29 C.F.R. § 4.187(e)(1). Only the status of Willie Evans is left open by the stipulations.

The evidence about Willie Evans’s role at E&S is mixed. Ms. Evans testified that Willie Evans had an “inactive role” in the company, and Respondents’ discovery responses claimed that he was only an employee of E&S. (HT, p. 125; PX 23, p. 102.) Yet corporate filings with the state of Alaska list Willie Evans as a director of the company, just like the other named Respondents. (Petitioner’s Closing Brief, Appendix C.) There is no other specific evidence in the record about Willie Evans’s work at E&S, though I note that it was the board of directors that unanimously voted to terminate the Plan in 2008, precipitating the violations at issue in this case. (RX C, p. 91.)

Much of the relevant caselaw on this point has dealt with companies where the individuals who were corporate officers were the same as the individuals who exercised day-to-day control over the company’s operations. 29 C.F.R. § 4.187(e)(3); *see, e.g., United States v. Sancolmar Industries, Inc.*, 347 F. Supp. 404, 408 (E.D. N.Y. 1972); *Rasputin*, ARB No. 03-059; *Hugo*, ARB No. 99-003. However, a close reading of the implementing regulations indicates that

corporate office and control of regular operations are independent bases for liability: while they often overlap, both qualifications are not required. *See* 29 C.F.R. § 4.187(e)(4) (personal liability “is not limited to the officers of a contracting firm *or* to signatories to the Government contract ..., *but includes* all persons, irrespective of proprietary interest, who exercise control, supervision, or management over the performance of the contract”) (emphasis added); *Rasputin*, ARB No. 03-059. Too, corporate office is a strong enough connection for a debarred individual to prevent any other company they are a director of from gaining government contracts. 29 C.F.R. § 4.188(a), (c)(1) (“where a person is an officer or director in a firm, a “substantial interest” will be deemed to exist”). Thus, by analogy, holding a directorship at a debarred company should be enough to extend the company’s debarment to the individual.

On the basis of his being on E&S’s board of directors, I, therefore, find that Willie Evans is also a “responsible party” under the Act.

### CONCLUSION

For all of the reasons above, I find that the Respondents E&S, Mayfield Evans, Barry Evans, Jacqueline Evans, and Willie Evans are all responsible parties under the SCA. The Respondents have violated the Act by failing to pay fringe benefit obligations in a timely manner. For the reasons discussed above, including the fact that I find their actions culpable and the resulting violations serious, the Respondents have not demonstrated “unusual circumstances” that could relieve them from the sanction of debarment.

### ORDER

Accordingly, the Respondents E&S, Mayfield Evans, Barry Evans, Jacqueline Evans, and Willie Evans will all be DEBARRED from receiving government contracts for a period of three years. The Secretary will forward the Respondents’ names to the Comptroller General, as provided by the Act. 41 U.S.C. § 354(a).

JENNIFER GEE  
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).