

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 23 February 2021**

**Case Number: 2019-SCA-00007**

*In the Matter of:*

**ADMINISTRATOR, WAGE & HOUR  
DIVISION, UNITED STATES  
DEPARTMENT OF LABOR**  
*Complainant,*

**v.**

**MORRIS TRANSPORT, INC.,  
NATHANIEL T. MORRIS, and  
BETTY MORRIS, Individually,**  
*Respondents.*

Appearances: LaShanta Harris, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
Arlington, Virginia  
For the Complainant

Betty Morris, In Pro Per  
Baltimore, Maryland  
For the Respondents

**DECISION AND ORDER**

**Summary**

This matter arises under the McNamara-O'Hara Service Contract Act of 1965 ("SCA"), 41 U.S.C. §§ 6701-6707, as amended, and the implementing regulations at 29 C.F.R. Parts 4 - 6. The SCA requires federal contractors to pay their employees prevailing wage rates and fringe benefits. Here, the Administrator, Wage and Hour Division, U.S. Department of Labor ("Administrator") alleges Morris Transport, Inc. and its co-owners, Nathaniel T. and Betty Morris (collectively "Respondents"), violated the SCA by failing to pay fourteen (14) employees the proper amount of wages and fringe benefits and now brings this action to collect a total of \$44,058.53 in back wages

and debar Respondents from receiving federal contracts for a period of three years. For the reasons explained below, while liable for the underpayments, though not in the amount requested, I find Respondents should not be placed on the debarred list.

### **Background and Procedural History**

Morris Transport, Inc. provided contract transportation support to the United States Postal Service (“USPS”) in and around Baltimore, Maryland. After receiving an anonymous complaint that one of Morris Transport’s employees had not received pay for travel time, the Department of Labor’s Wage and Hour Division investigated the company beginning in August 2017 and concluded that, in addition to failing to pay for one employee’s travel time between November 18, 2015 and November 17, 2017, Morris Transport failed to pay fourteen (14) employees for work performed between Saturday, October 28, 2017 through Friday, November 17, 2017, resulting in a total of \$44,058.53 in back wages owed.

On December 13, 2018, counsel for the Administrator filed a Complaint with the Office of Administrative Law Judges alleging that Respondents failed to pay certain service employees wage rate and fringe benefits required by the SCA. Respondents acknowledged they did not pay their employees for the work they performed, but averred that the USPS wrongfully withheld money due them, which resulted in their inability to pay their employees. Respondents disputed that the one (1) employee was owed for travel time and that the circumstances of this case warrant debarment.

On February 22, 2019, I issued a *Notice of Docketing* (“Notice”), notifying all three Respondents that the matter had been docketed, setting a hearing date of July 18, 2019, and establishing prehearing deadlines. The Notice also instructed Respondents they had 30 days from receipt of the Complaint to file an Answer with this Office. When Respondents had not filed the required response, I issued an *Order to Show Cause* (“Order”) on May 1, 2019, advising Respondents to show cause within fifteen (15) days of the date of the Order why a default judgment should not be entered and why the material facts alleged in the Complaint should not be adopted as my findings of fact. Respondents did not file a responsive pleading to the *Order to Show Cause*. Accordingly, on July 9, 2019, counsel for the Administrator filed *Motion for Default Judgment* (“Motion”), requesting entry of a default judgment against Respondents.

By order dated July 10, 2019, I cancelled the July 18, 2019 hearing and gave Respondents until August 14, 2019 to file a response to the Motion. On August 14, 2019, Respondent Betty Morris filed *Respondents’ Reply to Order to Show Cause* (“Reply”), serving a copy on counsel for the Administrator.<sup>1</sup> In her reply, Betty Morris explained that all business activities pertaining to Morris Transport, Inc. ceased on November 17, 2017 and that her husband, Nathaniel T. Morris,

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<sup>1</sup> Mrs. Morris does not have legal representation but is being assisted in this matter by her daughter, Deanna Morris Keller. As a self-represented party apparently lacking legal expertise, I provided Mrs. Morris “with a degree of adjudicative latitude” throughout these proceedings. *See, e.g., Hukman v. U.S. Airways, Inc.*, 2017 U.S. Dist. LEXIS 122225, at \*6 (E.D. Pa. Aug. 3, 2017) (stating that “because [plaintiff] proceeds pro se, the Court construes her pleadings liberally.”) (internal citations omitted); 20 C.F.R. § 802.211(e).

passed away on June 15, 2018.<sup>2</sup> Betty Morris additionally explained that “there are unusual circumstances associated with the information provided” and there is “documentation that supports Respondents position . . . directly relevant to all business with Nathaniel Morris.” By Order issued on August 22, 2019, I found Respondents had complied with my July 10, 2019 Order and denied the Administrator’s *Motion for Default Judgment*.

However, as it appeared that Morris Transport, Inc. had ceased operations and one of the co-owners passed away, before rescheduling the case for hearing, I required counsel for the Administrator to file a status report indicating whether she would still move to hold Betty Morris individually responsible for back wages if the amount of any withheld funds did not exceed \$44,058.53, and whether she would still seek debarment for a company no longer in operation and a co-owner in her 80s.

In a status report filed with the court on September 23, 2019, counsel for the Administrator indicated that “the amount of money being withheld by the United States Postal Service is \$44,058.53, the same amount owed to Respondent’s employees. If Respondents consent to the disbursement of all withheld funds . . . the Administrator will not pursue back wages against Mrs. Morris” but will still seek debarment. Respondents did not accept the offer, and the matter was scheduled for hearing on December 20, 2019, later continued to September 28, 2020.

However, during a pre-hearing conference with Betty Morris, Deanna Morris Keller, and counsel for the Administrator on the day of the hearing, I was informed that the USPS was apparently not withholding any money for disbursement to the affected employees. If true, this fact detrimentally altered Betty Morris’s legal posture and her potential personal liability for the back wages. Additionally, Betty Morris indicated that at least two of the fourteen former employees may have filed civil actions in Maryland state court seeking the same back wages for work performed for Morris Transport. Accordingly, Mrs. Morris submitted that she believed legal representation was now necessary given the increased scope and complexity of the case. Over the Administrator’s objection, I granted Betty Morris’s request to continue the September 28, 2020 hearing.

I gave Betty Morris 45 days to find an attorney and rescheduled the hearing to begin on November 19, 2020. Additionally, I required counsel for the Administrator to file a report by October 15, 2020, with a copy served on Respondents, detailing the status of the previously thought-to-be-withheld \$44,058.53. She did, confirming that the USPS is not withholding any funds to satisfy any underpayments assessed by this tribunal and that the USPS takes the position that no money is owed to Morris Transport in connection with the contracts at issue in this case.

A full evidentiary hearing was conducted on November 19, 2020. Respondents represented themselves, offered multiple exhibits and called and cross-examined witnesses. I admitted Administrator’s Exhibits (AX) 1-14 and Respondent’s Exhibits (RX) 1-6. Counsel for the Administrator filed her closing brief on February 1, 2021 and Respondents on February 8, 2021.

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<sup>2</sup> Mrs. Morris provided a death certificate filed on June 18, 2018.

The findings of fact and conclusions of law below are based on my analysis of the entire record and my observations of demeanor of the witnesses who testified at the hearing. I have carefully reviewed and considered, though not specifically mentioned, each exhibit and argument of the parties.

### Positions of the Parties

The Department of Labor contends that Respondents are individually and collectively liable for \$44,058.53 in back wages and fringe benefits due to the fourteen employees in the amounts listed below and should be debarred from receiving federal government contracts for a period of three years.

<b>Employee Name</b>	<b>Total Hours Worked During The Period 10/28/2017 to 11/17/2017</b>	<b>Amount of Prevailing Wage and Fringe Benefits Owed<sup>3</sup></b>
	<i>Regular + Overtime</i>	<i>Wages + Benefits = Total</i>
Betteker, William	101.0 + 6.25 = 107.25	\$2247.96 + \$511.06 = \$2,759.02
Bridges, Harold	55.53	\$1163.91 + \$280.98 = \$1,444.89
Fogarty, Geddes	113.32	\$2374.98 + \$573.35 = \$2,948.33
Hampton, Andre	78.0 + 3.0 = 81	\$1697.76 + \$394.68 = \$2,092.44
Hebron, Albert	99.5 + 4.0 = 103.50	\$2169.36 + \$718.52 + \$6,350.88 = \$9,238.76 <sup>4</sup>
Holmes, Robert	120 + 27.98 = 147.98	\$3101.45 + \$607.20 = \$3,708.65
Kus, Karl	93.54	\$1960.70 + \$473.34 = \$2,434.04
Parekh, Nikhil	101.58	\$2129.12 + \$513.99 = \$2,643.11
Ridgeway, Bernard	104.25	\$2185.08 + \$527.51 = \$2,712.59
Roberts, James	52.58	\$1102.08 + \$266.05 = \$1,368.13
Rowe, Michael	120.0 + 1.32 = 121.32	\$2542.66 + \$607.20 = \$3,149.86
Thomas, Ricky E.	98.25 + 7.88 = 106.13	\$2224.38 + \$497.15 = \$2,721.53
Thomas, Ricky T.	120 + 19.93 = 139.93	\$2932.93 + \$607.20 = \$3,540.13
Weathers, Raymond	115.33 + 14.13 = 129.46	\$2713.48 + 583.57 = \$3,297.05
<b>Grand Total</b>		<b>\$44,058.53</b>

<sup>3</sup> The Administrator's calculations appear to be based upon a prevailing wage rate of \$20.96 per hour and a fringe benefits rate of \$5.06 per hour, for a total of \$26.02/hour for all employees. As discussed below, the prevailing wage rate under two of the three USPS contracts in effect during the relevant period was \$20.73/hour and fringe benefits at \$5.06/hour for a total rate of \$25.79/hour. In other words, only one of the three contracts had a prevailing wage of \$20.96/hour.

<sup>4</sup> This amount includes \$2,887.88 in back wages and \$6,350.88 for uncompensated travel time.

Respondents admit their employees did work the hours alleged for the three weeks between October 28, 2017 and November 17, 2017, but that, through no fault of their own, they could not pay because the USPS refused to compensate them. Additionally, because the USPS starts the clock only after a contractor arrives at the postal facility, they do not believe Albert Hebron is owed for any travel time driving the company truck to and from a Germantown, Maryland parking lot to the postal facility in Gaithersburg. Finally, Respondents submit that debarment is not warranted as “unusual circumstances” are present.

### **Issues in Dispute**

Whether Respondents failed to pay the correct amount of prevailing wages and fringe benefits to fourteen service employees and failed to pay required travel pay to one service employee.<sup>5</sup>

If yes, whether Respondents have established “unusual circumstances” to warrant relief from debarment from entering contracts with the United States government for three (3) years as a result of the violations under Section 5(a) of the Act.

### **Legal Standard**

Under the Service Contract Act of 1965, every contract entered into with the government of the United States over the amount of \$2,500.00, the principal purpose of which is to provide services in the United States through the use of service employees, shall specify the minimum amount of prevailing wages and health and welfare benefits to be furnished to the employees. Any violation renders the responsible party liable for underpayments owed to an employee. In the event of a violation, the responsible parties are barred for a period of three years from entering into contracts with the United States, unless the Secretary of Labor determines otherwise based on unusual circumstances. 41 U.S.C. § 351 *et seq.*

The Administrator can satisfy her initial burden to establish that employees performed work for which they were improperly compensated by producing sufficient evidence to show the amount and extent of that work through reasonable inference. The burden then shifts to the employer to show evidence of the precise work performed or other evidence to negate the inference.

In the present case, Respondents admit that they entered into three contracts with the United States Postal Service, all in excess of \$2,500.00 and subject to the SCA. Respondents also admit

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<sup>5</sup> Nathaniel Morris passed away on June 15, 2018, and Betty Morris filed a bankruptcy petition under Chapter 13 of the United States bankruptcy code on February 19, 2020 in the United States Bankruptcy Court for the District of Maryland (case No. 20-12132). I did not toll this proceeding pending resolution of any wage claims in the bankruptcy court, finding it is exempt from the automatic stay provisions of the bankruptcy code as a proper exercise of the Administrator’s regulatory powers under 11 U.S.C. § 362(b)(4), provided she seek only to establish through this proceeding the amount of any unsecured claim she may have against Betty Morris, and jointly and severally with Morris Transport, and agree not to seek the enforcement of any money judgment against Betty Morris during the pendency of any bankruptcy proceedings without the approval of the bankruptcy court. However, the Administrator could still seek to establish that Morris Transport and Betty Morris are ineligible for federal contracts.

that they did not pay any wages or fringe benefits for work performed by their service employees during a three-week period ending November 17, 2017. They also do not dispute that one employee was not paid for the travel time spent driving his personal vehicle from his home to a parking lot where he picked up a company postal truck, then drove to the post office to pick up the mail, and reversed the route after ending his shift, but deny he was improperly compensated and claim that unusual circumstances exist to warrant not being debarred.

### **Findings of Fact**

The facts in this case are relatively straightforward. Nathaniel T. Morris and his wife, Betty Morris, incorporated Morris Transport, Inc. in the State of Maryland in 1992. Morris Transport, Inc. provided transportation support to the United States Postal Service by hauling mail between USPS locations in and around the State of Maryland.<sup>6</sup> Morris Transport employed several individuals to drive trucks and haul mail under these contracts.

Nathaniel and Betty Morris were co-owners and company officers of Morris Transport, Inc., with Nathaniel as the president and Betty as the secretary and treasurer. Some of Betty Morris's responsibilities for Morris Transport included the hiring and firing of employees, implementing and enforcing company policy, and maintaining payroll.

Morris Transport, Inc. was a party to three federal contracts with the USPS to provide mail hauling services, all of which were covered by the Service Contract Act and required payment of minimum wages and benefits to its employees. The three contracts at issue in this case were Contract Nos. 20810, 20832, and 21035, each in an amount in excess of \$2,500.00, with a total amount of \$1,424,387.32.

Contract Nos. 20810 and 20832 covered the period July 1, 2016 through June 30, 2020 and Contract No. 21035 covered the period September 1, 2017 through June 30, 2019. Morris Transport employees worked on and were paid under at least one of these three contracts during the period July 1, 2016 through November 17, 2017.

The prevailing wage for contracts 20832 and 20810 was \$20.73 per hour with fringe benefits an additional \$5.06 per hour, for a total of \$25.79 per hour. The prevailing wage and fringe benefits for contract 21035 were \$20.96 and \$5.06, respectively, for a total of \$26.02. In other words, depending on the contract, the total wage rate due each employee was either \$25.79 or \$26.02 per hour.

While Morris Transport paid its employees weekly,<sup>7</sup> the USPS paid Morris Transport at the end of the month for work performed during the month. From all accounts, Morris Transport

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<sup>6</sup> Though not critical to the outcome of this case, I note that Nathaniel Morris began moving mail for the USPS beginning in 1988.

<sup>7</sup> 29 C.F.R. § 4.165(b).

employees enjoyed working for Nathaniel and Betty Morris, who treated their employees fairly and with respect.

An IRS lien depleted most of the Morris' savings in 2017.

In the middle of 2017, Nathaniel Morris tried unsuccessfully to discuss with the USPS contracting office issues regarding wage increases, extra trips, late slips, and allegations that postal service employees were telling his drivers that Morris Transport would no longer have the mail haul contracts and that they should switch contractors.

On or about November 16, 2017, Nathaniel Morris called the USPS contracting officer and told her that, because of the refusal to discuss and address the apparent changes in the contract terms, it was financially impossible for Morris Transport to continue as a viable business. Morris Transport did not complete any work for the USPS after November 17, 2017.

Respondents did not pay any wages or fringe benefits to its 14 employees for work they performed during the three weekly pay periods ending November 3, 2017, November 10, 2017 and November 17, 2017.

The last payment Morris Transport received from the USPS was on or about October 31, 2017. Nathaniel and Betty Morris expected the USPS to pay Morris Transport at the end of November 2017 for the work performed by its employees during November 1-17, 2017. When Morris Transport did not receive payment, Nathaniel Morris tried unsuccessfully to reach the USPS contracting officer by telephone to discuss the nonpayment.

By letter dated January 5, 2018, and received January 10, 2018, a USPS contracting officer informed Nathaniel Morris that the USPS terminated the three contracts for default. The USPS determined that Morris Transport was not due any additional money and refused to pay Morris Transport for the work actually performed in November 2017, a decision directly leading to Morris Transport's inability to pay its employees. If the USPS had paid Morris Transport for the work actually performed from November 1, 2017 to November 17, 2017, then Morris Transport would have been able to pay its 14 employees the entirety of the wages due them.

Albert Hebron was employed as a driver delivering mail for Morris Transport and paid under at least one of the three USPS contracts. According to his WHD witness statement of December 5, 2017, Hebron resides on Sweetgum Circle in Germantown, Maryland.<sup>8</sup> Each day, he drove his own vehicle to a postal facility located at 12774 Wisteria Drive in Germantown where the company mail truck was parked and drove it to the Gaithersburg, Maryland post office at 16501 Shady Grove Road to load mail. At end of his shift, Hebron drove the company mail truck from Gaithersburg back to Germantown where he parked it overnight, picked up his car and drove home. Nathaniel Morris directed Hebron to use the company truck to haul the mail and park it in the Germantown lot at the end of each day because of a lack of parking spaces at the Gaithersburg postal facility. Hebron followed this routine each day he worked from at least November 15, 2015 to November 17, 2017, a total of 303 hours. Hebron was not paid for the 30 minutes travel time driving the company truck from the Germantown parking lot to the Gaithersburg postal facility

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<sup>8</sup> I note that Hebron's payroll records reflect a mailing address in Montgomery Village, MD.

and back as the USPS had previously told Nathaniel Morris that the time started and ended when a driver clocked in and out at the postal facility. The direct travel time between Hebron's residence and the Gaithersburg postal facility was approximately 15 minutes. The total travel time from Hebron's residence to the Germantown parking lot to the Gaithersburg postal facility was approximately 20 minutes. In other words, the detour to pick up the company truck only added about 5 minutes to what would have been his normal commute if Hebron drove his personal vehicle from his home direct to the Gaithersburg postal facility.

While there were private lots closer to the Gaithersburg facility, the parking lot at the Germantown postal facility was the closest free parking lot to Gaithersburg. Nathaniel Morris saved money by requiring Hebron to park the company truck at Gaithersburg.

Prior to November 3, 2017, Respondents prepared and maintained all required payroll and time sheets for its employees. Respondents did not prepare payroll records for the two-week period November 4, 2017 through November 17, 2017 because no money was disbursed to their employees.

On or around February 15, 2018, DOL requested the USPS withhold \$44,367.34 from Respondent's contract payments to satisfy back wages. The USPS provided DOL with a verification letter that the requested funds were being withheld. For over two and a half years, the Administrator believed that the USPS was withholding the funds. It was not, and the USPS did not notify the Administrator that it was not withholding the funds until September 2020. It is unclear where the money went and the USPS now takes the disputed position that no money is owed Morris Transport on any of the three contracts.

WHD initiated an investigation of Morris Transport in August 2017 after receiving an anonymous complaint that an employee was not being paid for travel time. The investigation covered the period November 18, 2015 to November 17, 2017. The WHD investigator interviewed six Morris Transport employees. All indicated their hourly pay rate was \$25.79, meaning an hourly prevailing wage rate of \$20.73 and fringe benefits of \$5.06. The WHD investigator concluded that Morris Transport did not pay one employee for travel time during the period November 15, 2015 to November 17, 2017. The investigator also concluded that 14 employees of Morris Transport were not paid any wages or fringe benefits for the three weeks during the period October 28, 2017 through November 17, 2017.

Betty Morris provided the WHD investigator with copies of all time sheets from the period January 24, 2015 to November 3, 2017. Mrs. Morris did not provide timesheets for the two weeks between November 4, 2017 and November 17, 2017 as none were ever created.<sup>9</sup> Betty Morris and Nathaniel Morris otherwise cooperated fully with the WHD investigation. Neither Nathaniel Morris, Betty Morris, nor Morris Transport, Inc. falsified or destroyed records or misclassified its employees.

The six employees interviewed by the WHD investigator all related the actual number of hours each worked during the period October 28, 2017 to November 17, 2017. Using their

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<sup>9</sup> 29 C.F.R. § 4.170.

timesheets for the first week and their statements covering weeks two and three, the investigator was able to create timesheets for these six employees covering the entire period of October 28, 2017 to November 17, 2017. Again, all six individuals stated their pay rate was \$25.79/hour.

Using the timesheets of the other eight employees given to him by Betty Morris covering the week between October 28, 2017 to November 3, 2017, and the timesheets of the three prior weeks, the WHD investigator then reconstructed their time sheets for the period November 4, 2017 to November 17, 2017 by using the average of their prior four weeks of time records.

The WHD investigator determined Morris Transport violated the prevailing wage and fringe benefit provisions of the USPS contracts and that they owed a total of \$37,707.65 in prevailing wages and fringe benefits for the hours that the 14 employees worked between October 28, 2017 and November 17, 2017. In calculating the amount of back wages, the WHD investigator used a prevailing wage rate of \$20.96 per hour and fringe benefits of \$5.06, for a total pay rate of \$26.02. However, all six employees interviewed by the WHD investigator indicated a total pay rate of \$25.79 per hour, meaning their prevailing wage was \$20.73 per hour and their fringe benefits rate was \$5.06 per hour.<sup>10</sup>

The WHD investigator also determined that Morris Transport owed Albert Hebron \$6,350.88 for the non-compensated travel time.<sup>11</sup>

The 2017 WHD investigation was the first of Morris Transport or Nathaniel and Betty Morris. The 2017 WHD investigation was the only time that Morris Transport or Nathaniel or Betty Morris was alleged to have underpaid their employees. Except for the three-week period in 2017 when no one was paid, Morris Transport employees always received their wages and benefits.

The USPS did not reimburse or pay Morris Transport for travel time. The USPS calculated pay due to Morris Transport starting when a driver first arrived at the USPS facility to pick up the mail and stopping when the driver left the facility at the end of the shift. Since the USPS did not pay Morris Transport for travel time to and from the postal facilities, Nathaniel and Betty Morris honestly believed they did not have to pay their employees for time traveling from a parking lot

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<sup>10</sup> Additionally, the only contract that required payment of a \$20.96 prevailing wage was 21035, which was in effect from September 1, 2017 to June 30, 2019. The other two contracts were in effect from July 1, 2016 to June 30, 2020 and required payment of a prevailing wage of \$20.73 per hour and \$5.06 for health and welfare benefits, for a total of \$25.79/hour.

<sup>11</sup> In calculating this amount, it appears the investigator multiplied 0.5 hours (the 15 minutes Mr. Hebron traveled each way for a total of 30 minutes a day) by a prevailing wage rate and fringe benefits rate of \$26.02 by the approximately 488 days he worked between November 15, 2015 and November 17, 2017. Again, Hebron testified that his wage rate was \$25.79 per hour and the earliest effective date of any of the three contracts provided by the Administrator in this case was July 1, 2016. In other words, the current record does not contain a contract between Respondents and the USPS subject to the SCA in effect from November 15, 2015 to June 30, 2016, a necessary predicate to establish required prevailing wages and fringe benefits.

where the postal truck was located to the USPS facility, or the time traveling from the USPS facility to the parking lot at shift's end.

Morris Transport had no other apparent source of income other than the USPS contracts.

Nathaniel Morris passed away on June 15, 2018.

Neither Morris Transport, Inc. nor Betty Morris has paid any back wages owed to the 14 former employees.

Neither Betty Morris nor Morris Transport has bid on any federal contracts since November 17, 2017.

Betty Morris filed for chapter 13 bankruptcy on February 19, 2020. The 14 former employees and the Department of Labor are listed as creditors. If she had the means to do so, Betty Morris would pay the employees what they are owed.

Morris Transport, Inc. is no longer in operation. Betty Morris is now 81 years old. I find she was a credible witness at the hearing, as she was honest, forthright, and candid.

## DISCUSSION

### *Responsibility of Nathaniel and Betty Morris*

The Administrator alleges that Nathaniel and Betty Morris are responsible parties and thus individually liable for the total amount of any back wages and fringe benefits owed. A party responsible for Section 3(a) violations of the SCA does include an “officer of a corporation who actively directs and supervises contract performance, including employment policies and practices and the work of the employees working on the contract.”<sup>12</sup> In other words, individual liability “attaches to the corporate official who is responsible for, and therefore causes or permits, the violation of the contract stipulations required by the Act, i.e. corporate officers who control the day-to-day operations and management policy are personally liable for underpayments because they cause or permit violations of the Act.”<sup>13</sup> A responsible party is be “liable for the violations, individually and jointly with the company.”<sup>14</sup>

Remedial actions, such as the SCA enforcement action here, can survive a respondent's death.<sup>15</sup> Thus, while Nathaniel Morris has passed, this federal cause of action would normally survive as it seeks back wages for specific employees and is not punitive in nature. However,

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<sup>12</sup> 29 C.F.R. § 4.187(e)(1).

<sup>13</sup> *Id.* § 4.187(e)(3).

<sup>14</sup> *Id.* § 4.187(e)(1).

<sup>15</sup> *United States v. NEC Corp.*, 11 F.3d 136, 137 (11th Cir. 1994).

Complainant has not moved to substitute the estate of Nathaniel Morris.<sup>16</sup> Accordingly, I find that, while the action against Nathaniel Morris is properly dismissed and that he is no longer liable for any amount of back wages owed nor subject to any period of debarment, the Administrator may proceed with the instant action against any remaining responsible parties. Here, the facts demonstrate Betty Morris, as a co-owner and officer of Morris Transport responsible for hiring and firing employees, records and bookkeeping and payroll, is a responsible party and individually liable for any SCA violations.<sup>17</sup>

*Back Pay for Work Performed Between October 28, 2017 and November 17, 2017*

The Administrator bears the initial burden of establishing that Morris Transport's fourteen employees actually performed work for which they were not compensated. The Administrator can satisfy this burden by proving that the employees did perform work for which they were not paid and produces sufficient evidence to show the amount and extent of that work through reasonable inferences. The burden then shifts to the employer to show evidence of the precise amount of work performed or with other evidence to negate the inference. If the employer is unable to show this, I may award damages even if the amount of damages is only approximated. *In the Matter of VGA, Inc.*, ARB No. 09-077, 2006-SCA-00009 (ARB Sept. 29, 2011). Further, employees are not penalized because an employer's documentation may be incomplete.

Here, Betty Morris acknowledges that fourteen of her former employees were not paid for work they performed during the three-week period between October 28, 2017 and November 17, 2017, and she does not appear to dispute the number of hours each employee worked as determined by the WHD investigation.<sup>18</sup> The remaining issue is the wage rate they should be paid.

In calculating the amount of back wages owed, the WHD investigator used a wage rate of \$26.02 per hour, \$20.96 in pay and \$5.06 in fringe benefits. However, all six individuals interviewed by the WHD investigator indicated a prevailing wage rate of \$25.79, meaning \$20.73 in pay per hour and \$5.06 in fringe benefits. Additionally, only one of the contracts required a prevailing wage rate of \$20.96, Contract No. 21035. The other two had a prevailing wage of \$20.73. The Administrator presented no evidence as to what contract each employee was paid under. Accordingly, I find the best evidence is the testimony of the six interviewed employees

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<sup>16</sup> See Fed. R. Civ. P. 25(a).

<sup>17</sup> Of course, Betty Morris's pending chapter 13 bankruptcy impacts any amount of back wages she would actually be required to pay.

<sup>18</sup> Betty Morris provided timesheets for the first week but did not prepare timesheets for weeks two and three, which had to be reconstructed. If the employer did not maintain the requisite records, WHD has the discretion to use reasonable methods to calculate hours worked. "Further, the [act] makes clear that employers, not employees, bear ultimate responsibility for ensuring that employee time sheets are an accurate record of all hours worked by employees." *Kuebel v. Black & Decker, Inc.*, 643 F.3d 352, 363 (2d Cir. 2011), citing *Skelton v. Am. Intercontinental Univ. Online*, 382 F. Supp. 2d 1068, 1071 (N.D. Ill. 2005). Here, I find the method used to reconstruct weeks two and three by using the prior four weeks average was reasonable.

and conclude that \$20.73 is the prevailing wage for the entire three-week period and recalculate the amount of back wages using a \$20.73 prevailing wage for all 14 employees, reflected below.

<b>Name</b>	<b>Regular and Overtime Hours Worked During The Period 10/28/2017 to 11/17/2017</b>	<b>Amount of Prevailing Wage and Fringe Benefits Owed<sup>19</sup></b>
	<i>Regular + Overtime</i>	<i>Wages + Benefits = Total</i>
Betteker, William	101 + 6.25 = 107.25	\$2,223.29 + \$511.06 = \$2,734.35
Bridges, Harold	55.53	\$1,151.14 + \$280.98 = \$1,432.12
Fogarty, Geddes	113.32	\$2,349.12 + \$573.35 = \$2,922.47
Hampton, Andre	78.0 + 3.0 = 81.0	\$1,679.13 + \$394.68 = \$2,073.81
Hebron, Albert	99.5 + 4 = 103.5	\$2,145.56 + \$503.47 = \$2,649.03 <sup>20</sup>
Holmes, Robert	120.0 + 27.98 = 147.98	\$3,067.63 + \$607.20 = \$3,674.83
Kus, Karl	93.54	\$1,939.08 + \$473.34 = \$2,412.42
Parekh, Nikhil	101.58	\$2,105.75 + \$513.99 = \$2,619.74
Ridgeway, Bernard	104.25	\$2,161.10 + \$527.51 = \$2,688.61
Roberts, James	52.58	\$1,089.98 + \$266.05 = \$1,356.03
Rowe, Michael	120.0 + 1.32 = 121.32	\$2,514.96 + \$607.20 = \$3,122.16
Thomas, Ricky E.	98.25 + 7.88 = 106.13	\$2,200.07 + \$497.15 = \$2,697.22
Thomas, Ricky T.	120.0 + 19.93 = 139.93	\$2,900.75 + \$607.20 = \$3,507.95
Weathers, Raymond	115.33 + 14.13 = 129.46	\$2,683.71 + \$583.57 = \$3,267.28
<b>Total</b>		<b>\$37,158.02</b>

#### *Back Pay for Travel Time*

Nathaniel Morris directed that one of the company trucks be parked overnight at a Germantown, Maryland lot as the Gaithersburg postal facility did not have a sufficient number of spaces. Each day Albert Hebron drove his personal vehicle five minutes from his home to Germantown, Maryland to pick up the company truck where he then drove another 15 minutes to the Gaithersburg postal facility to pick up the mail. At the end of his shift, Hebron would drive the company truck 15 minutes from Gaithersburg back to Germantown where he parked it in the lot designated by Nathaniel Morris. Hebron then drove the five minutes home using his personal

<sup>19</sup> Transportation contracts are exempt from the overtime provisions in the Contract Work Hours and Safety Standards Act (CWHSSA). In other words, the CWHSSA does not apply to drivers working under USPS mail haul contracts. Accordingly, while some of the 14 employees worked more than 40 hours a week, the pay rate remains \$20.73 per hour, regardless of the number of hours worked in a given week. Additionally, fringe benefits are not earned on overtime hours.

<sup>20</sup> This amount excludes any amount of back wages due to Mr. Hebron for Morris Transport's failure to pay him for travel time between Germantown and Gaithersburg, which will be addressed below.

vehicle. Hebron followed the same routine each day he worked during the period of the investigation, November 15, 2015 to November 17, 2017.

The Administrator is now seeking a total of \$6,350.88 in back pay and \$215.05 in fringe benefits due Hebron for the additional 303 total hours she submits Hebron spent driving the company vehicle to and from the Germantown parking lot to the Gaithersburg postal facility between November 15, 2015 to November 17, 2017. Respondents deny Hebron should be compensated for such time. Whether Hebron should be compensated initially requires this tribunal to determine whether driving the company truck from the parking lot to the postal facility and back is a “principal activity.” For the reasons below, I find that it was.

Under the Portal to Portal Act, 29 U.S.C. § 254, ordinary home to work travel is a normal incident of employment and not compensable. But a service employee must be paid for the principal activities which that employee is employed to perform, including those that are an integral and indispensable part of the principal activities. 29 C.F.R. § 790.8. Here, the travel time Hebron spent driving the company mail truck from the Germantown parking lot to the Gaithersburg postal facility, and the return trip, was integral to performing the contracts’ principal activity - mail hauling. In other words, without the company truck, Hebron could not pick up and deliver the mail. Further, the choice to park the truck each night in Germantown was not Hebron’s. Instead, Nathaniel Morris directed Hebron to use the company truck to haul the mail and pre-position it in a Germantown lot at the end of each day, albeit a reasonable practice given the lack of available parking spaces at the Gaithersburg postal facility and a desire not to pay for a private lot closer to Gaithersburg. The fact the USPS did not start paying Morris Transport until Hebron clocked in at the postal facility and ended when he clocked out does not relieve Morris Transport of its obligation to pay him for activities directly related or preliminary to the principal activity of mail hauling. 29 C.F.R. § 4.187(e)(5).<sup>21</sup> Here, that work included the time it took to drive a contract vehicle to and from a designated work place. 29 C.F.R. § 785. In other words, Hebron’s work day began when he started driving the company mail truck from Germantown to Gaithersburg and ended when he returned the vehicle to the Germantown parking lot, and he should be compensated for that time.<sup>22</sup>

However, the evidence does not support the amount of back wages calculated by the WHD investigator. Here, while the investigative period covered November 15, 2015 to November 17, 2017, the Administrator again only provided evidence of SCA contracts covering the period starting July 1, 2016. Morris Transport may not, in fact, have paid Hebron for the time traveling from the Germantown parking lot to the Gaithersburg post office and return but without evidence of a contract subject to SCA prevailing wages covering the period beginning November 15, 2015, Respondents are only responsible for time spent traveling on and after July 1, 2016 to November 17, 2017. In other words, the Administrator has not provided evidence of a contract in effect and

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<sup>21</sup> Reliance on advice from contracting agency officials is not a defense against a contractor’s liability for back wages. 29 C.F.R. 1.87(e)(5) (reliance on advice from contracting agency officials (or Department of Labor officials without the authority to issue rulings under the Act) is not a defense against a contractor’s liability for back wages under the Act.).

<sup>22</sup> Additionally, the 15 minute drive from the parking lot to the postal facility was not “so slight an expenditure of employee time as to be de minimis and therefore not compensable.” *Dunlop v. City Electric*, 527 F.2d 394, 398-99 (5th Cir. 1976). See generally *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946).

subject to the SCA minimum wage requirements during the period November 15, 2015 to July 1, 2016. The earliest contracts, 20810 and 20832, commenced July 1, 2016. Contract 21035 did not commence until September 1, 2017. Hebron testified his wage rate was \$25.79, so he must have been working under and paid by one of the two contracts that were in effect from July 1, 2016. The only other evidence just what contract Albert Hebron was paid under was his interview statement where he said his wage rate was \$25.79/hour. In either event, the earliest effective date of any of the contracts presented by the Administrator is July 1, 2016; there is no evidence of an SCA contract in effect prior to that date that would compel Morris Transport to pay SCA wages for travel time.

According to the reconstructed payroll records created by the WHD investigator, Hebron's travel time from Germantown to Gaithersburg and return for the period July 1, 2016 to November 17, 2017 was 39 regular hours and 171 overtime hours for a total of 210 hours. Using a prevailing wage of \$20.73 and a fringe benefit rate of \$5.06, Respondents would owe Hebron \$4,353.30 in back wages and \$197.34 in fringe benefits for the additional travel time from the period July 1, 2016 to November 17, 2017 for a total amount due of \$4,550.64.

#### *Debarment*

A Federal Government contract may not ordinarily be awarded to a person or entity that has been found to have violated the SCA. The names of such persons or businesses must be forwarded to the Comptroller General, who then adds the names to a published list of persons or firms found to have violated the Act.<sup>23</sup> However, the Secretary may decline to forward the names because of "unusual circumstances."<sup>24</sup> Debarment would not only bar Morris Transport from entering into federal contracts for three years, but would extend to Morris Transport's remaining corporate officer, Betty Morris, as well.

The essential question here is whether the SCA violations in this case were so egregious that debarment is warranted. The Administrator argues the facts and the law compel an affirmative response. On review of the entire record, I disagree.

Although the Act does not define the term "unusual circumstances," the regulations provide some guidance. 29 C.F.R. §§ 4.188(b)(3)(i-iii). First, as a threshold matter, the conduct must not be willful, deliberate, aggravated, or culpably negligent. Second, a good compliance history, cooperation in the investigation, repayment of moneys owed, and assurances of future compliance are generally prerequisites to relief. Finally, consideration of such non-exclusive mitigating factors such as whether the employer is a first-time violator, kept proper records, and seriousness of the violations is authorized. The presence of an aggravating factor generally precludes consideration of mitigating factors. *Charles Igwe, et al.*, ARB No. 07-120 (ARB Nov. 25, 2009).

Debarment is warranted only when a person or firm has "disregarded their obligations" to their employees protected by the Act. A "disregard for obligations" under the Act means a level

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<sup>23</sup> 41 U.S.C. § 6706(a).

<sup>24</sup> 29 C.F.R. § 4.188(b)(1). The Act does not provide for a definition of unusual circumstances.

of culpability beyond mere negligence, involving some element of intent.<sup>25</sup> To support a debarment order, the evidence must establish a level of culpability such as “aggravated or willful” and beyond mere negligence or inadvertent behavior. *A. Vento Construction*, WAB Case No. 87-51 (WAB Oct. 17, 1990). Allowing violations to persist can constitute evidence of intent to evade or a purposeful lack of attention to a statutory responsibility in support of debarment. *P&N Inc./Thermodyn Mechanical Contractors, Inc.*, ARB Case No. 96-116 (ARB Oct. 25, 1996).

In *A. Vento Construction*, the Wage Appeals Board explained that “[a]ctions typically found to be ‘aggravated or willful’ seem to meet the literal definition of those terms – intentional, deliberate, knowing violations of the Act.” Furthermore, in *Hugo Reforestation, Inc.*, the Board adopted the Supreme Court’s standard for establishing willful conduct under the Fair Labor Standards Act in *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988), which requires establishing that the “employer...knew or showed reckless disregard for the matter of whether its conduct was prohibited by statute.” *Hugo Reforestation, Inc.*, ARB Case No. 99-003 (ARB Apr. 30, 2011).

In *Sundex, Ltd.*, ARB Case No. 98-130, 1994-DBA-58 (ARB Dec. 30, 1999), citing to *G&O General Contractors, Inc.*, WAB Case No. 90-35 (WAB Feb. 19, 1991), the ARB stated that, once an intentional violation is established, “the standard for debarment is a ‘bright-line’ test, *i.e.*, a 3-year debarment period is mandatory, without consideration of mitigating factors or extraordinary circumstances.”

It is undisputed that Nathaniel and Betty Morris did not pay their employees for the three-week period immediately before Morris Transport ceased operations. The Administrator argues this constitutes intentional conduct requiring debarment. I disagree. The sole reason Morris Transport did not pay its employees was because of the USPS’s questionable decision to withhold money owed them. This situation does not involve a deliberate underpayment or a calculated decision to pay an improper wage rate, but instead a failure by Morris Transport to pay any wages due because they did not have the funding to do so through no fault of their own. *Elaine’s Cleaning Service, Inc. v. U.S. Dept. of Labor*, 106 F.3d 726 (6th Cir. 1997). In other words, this is not a case where Morris Transport had the funds available and intentionally refused to pay their employees, but instead the failure to pay was borne out of an inability to do so due to a lack of funding, the proximate cause of which was, and continues to be, USPS’s refusal to pay Morris Transport for work actually performed.

Nathaniel and Betty Morris did not falsify or destroy pay records and fully cooperated with the investigation. The Morris’ provided the WHD investigator all the records in their possession, except for last two weeks of work when no timesheets were prepared. This is not a willful failure to comply with its recordkeeping obligations under the Act.

The bottom line is that nothing in this record demonstrates Respondents’ actions were intentional, willful, or culpably negligent.

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<sup>25</sup> *Thomas and Sons Building Contractors, Inc.*, ARB Case No. 00-050, Case No. 1996-DBA-37 (ARB Aug. 27, 2001), *Order Denying Reconsideration* (ARB Dec. 6, 2001).

Additionally, though Morris Transport continuously contracted with the USPS to provide mail hauling services from 1988 to November 17, 2017, there is no history of other SCA violations. The three contracts at issue in this case were worth a total of approximately \$1,400,000.00. The back wages sought are less than \$45,000, or about .03% of the total value of the contracts, a miniscule amount. Though the period of investigation was over two years, the only violations uncovered by the WHD investigator were a failure to pay employees for a three week period after the investigation began and one employee who was not paid for an extra 10 minutes of travel time above what his normal commute would have been each day if he had driven his personal vehicle directly from his home to the postal facility. Both violations came with credible explanations. The failure to pay wages was again due to the USPS's questionable decision to withhold payment, and Morris Transport did not reimburse the single employee for driving the company postal truck from a parking lot in Germantown to the postal facility in Gaithersburg because USPS started paying them once the employee clocked in to the postal facility, so Morris Transport did not believe they were required to pay before that time. While ignorance of the law is not a defense to a failure to pay back wages, it is a factor to consider in determining whether unusual circumstances exist to warrant relief from debarment. Additionally, Hebron actually may have benefited driving the company truck from Germantown to Gaithersburg, saving wear and tear on his car and spending less on gas.

Nathaniel and Betty Morris took great pride in their lengthy and honorable service provided to the USPS and the many jobs they created for their employees, who in turn enjoyed working for Morris Transport. There is no evidence that Betty or Nathaniel Morris treated their employees cavalierly or maliciously or anything other than fairly. Prior to the three weekly pay periods in November 2017, Morris Transport never shorted their employees in terms of their compensation and the failure to pay their drivers in 2017 was the first, and only, time Morris Transport underpaid its employees. These violations were not widespread or continuing, and I find the failure to pay the fourteen employees for the three-week period and the one employee for travel time are de minimis violations of the SCA, and debarment a wholly disproportionate penalty.

The Administrator posits Respondents' purported failure to cooperate with the investigation, repay wages due, and refusal to provide assurances of future compliance as factors weighing in favor of disbarment. As noted, the failure to repay the back wages was due in no small part to the dubious decision by the USPS not to compensate Morris Transport for work performed. As to Morris Transport's ostensible failure to cooperate, Nathaniel and Betty Morris did meet with the WHD investigator and did provide all documentation in their possession. An honest and reasonable disagreement as to the scope of liability does not constitute "a failure to cooperate." Finally, exercising her regulatory right to contest serious allegations against her, her late husband and their former business does not constitute a refusal by Betty Morris to provide assurances of future compliance.

I conclude Respondents have established that the circumstances presented by the record in this matter are "unusual" as provided for in Section 5(a) of the Act, and relief from debarment is not only appropriate but warranted.

## **ORDER**

Based on the above findings of fact, conclusions of law, and on the entire record, IT IS HEREBY ORDERED that:

Respondents Betty Morris and Morris Transport are jointly and severally liable for \$41,708.66 in back wages for violations of the Service Contract Act to the individuals and in the amounts set forth in Appendix A.

The Administrator may not seek the enforcement of any money judgment against Betty Morris without the approval of the United States Bankruptcy Court for the District of Maryland.

Respondents Betty Morris and Morris Transport are relieved from debarment due to the unusual circumstances noted above.

SO ORDERED:

**STEPHEN R. HENLEY**  
Chief Administrative Law Judge

## Appendix A

<b>Name</b>		<b>Amount Owed</b>
Betteker, William		\$2,734.35
Bridges, Harold		\$1,432.12
Fogarty, Geddes		\$2,922.47
Hampton, Andre		\$2,073.81
Hebron, Albert		\$7,199.67 <sup>26</sup>
Holmes, Robert		\$3,674.83
Kus, Karl		\$2,412.42
Parekh, Nikhil		\$2,619.74
Ridgeway, Bernard		\$2,688.61
Roberts, James		\$1,356.03
Rowe, Michael		\$3,122.16
Thomas, Ricky E.		\$2,697.22
Thomas, Ricky T.		\$3,507.95
Weathers, Raymond		\$3,267.28
<b>Total</b>		<b>\$41,708.66</b>

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<sup>26</sup> Includes \$4,550.64 for unpaid travel time.

**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.

A copy of any such petition must also be served on the Chief Administrative Law Judge, Office of Administrative Law Judges, U.S. Department of Labor. 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.

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).

### **IMPORTANT NOTICE ABOUT FILING APPEALS:**

**The Notice of Appeal Rights has changed because the Board has implemented a new eFile/eServe system ("EFS") which is available at <https://efile.dol.gov/>.** If you use the Board's prior website link, [dol-appeals.entellitrak.com](http://dol-appeals.entellitrak.com) ("EFSR"), you will be directed to the new system. Information regarding registration for access to the new EFS, as well as user guides, video tutorials, and answers to FAQs are found at <https://efile.dol.gov/support/>.

#### *Filing Your Appeal Online*

Registration with EFS is a two-step process. First, all users, including those who are registered users of the current EFSR system, will need to create an account at [login.gov](http://login.gov) (if they do not have one already). Second, users who have not previously registered with the EFSR system will then have to create a profile with EFS using their [login.gov](http://login.gov) username and password. Existing EFSR system users will not have to create a new EFS profile. All users can learn how to file an appeal to the Board using EFS by consulting the written guide at <https://efile.dol.gov/system/files/2020-11/file-new-appeal-arb.pdf> and the video tutorial at <https://efile.dol.gov/support/boards/new-appeal-arb>.

Establishing an EFS account under the new system should take less than an hour, but you will need additional time to review the user guides and training materials. If you experience difficulty establishing your account, you can find contact information for [login.gov](http://login.gov) and EFS at <https://efile.dol.gov/contact>.

If you file your appeal online, no paper copies need be filed. **You are still responsible for serving the notice of appeal on the other parties to the case.**

### *Filing Your Appeal by Mail*

You may, in the alternative, including the period when EFSR and EFS are not available, file your appeal using regular mail to this address:

U.S. Department of Labor  
Administrative Review Board  
ATTN: Office of the Clerk of the Appellate Boards (OCAB)  
200 Constitution Ave. NW  
Washington, DC 20210-0001

### *Access to EFS for Non-Appealing Parties*

If you are a party other than the party that is appealing, you may request access to the appeal by obtaining a login.gov account and creating an EFS profile. Written directions and a video tutorial on how to request access to an appeal are located at: <https://efile.dol.gov/support/boards/request-access-an-appeal>

### *After An Appeal Is Filed*

After an appeal is filed, all inquiries and correspondence should be directed to the Board.

### *Service by the Board*

Registered users of EFS will be e-served with Board-issued documents via EFS; they will not be served by regular mail. If you file your appeal by regular mail, you will be served with Board-issued documents by regular mail; however, you may opt into e-service by establishing an EFS account, even if you initially filed your appeal by regular mail. At this time, EFS will not electronically serve other parties. You are still responsible for serving the notice of appeal on the other parties to the case.