

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 14 July 2010

OALJ Case No.: 2010-TLC-00054

ETA Case No.: C-10144-24297

In the Matter of

D & G FREY CRAWFISH,
Employer

Certifying Officer: William L. Carlson
Chicago Processing Center

Before: **WILLIAM S. COLWELL**
Associate Chief Administrative Law Judge

DECISION AND ORDER

On June 29, 2010, D & G Frey Crawfish (“the Employer”) filed a request for review of the Certifying Officer’s determination in the above-captioned temporary agricultural labor certification matter. *See* 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184(c)(1); 20 C.F.R. § 655.115(a) (2009). On July 8, the Office of Administrative Law Judges received the Administrative File from the Certifying Officer (“the CO”). In administrative review cases, the administrative law judge has five working days after receiving the file to “review the record for legal sufficiency” and issue a decision. § 655.115(a).

Statement of the Case

On April 28, 2010, the United States Department of Labor’s Employment and Training Administration (“ETA”) received an application from D & G Frey Crawfish (“the Employer”)

for temporary labor certification. AF 46-55.¹ In particular, the Employer requested certification for 20 “Crawfish Farm Laborers” between July 15, 2010, and February 25, 2011. AF 46. The Employer’s application was accepted for processing on June 4, 2010.² AF 7-11. The Notice of Acceptance (“NOA”) instructed the Employer, *inter alia*, that “in order to receive a labor certification, [the Employer] must also submit evidence that [the Employer had] obtained workers’ compensation coverage for [the Employer’s] employees. Such evidence, including the name of the insurance carrier and the policy number or proof of State law coverage, must be submitted to this office at the same time that [the] recruitment report is due.” AF 10.

On June 24, 2010, the CO denied the Employer’s application for temporary labor certification. AF 3-6. Citing to 655.122(e)(1), the CO stated that the Employer failed to submit proof of workers compensation insurance coverage. Because the CO did not receive the required documentation, the application was denied. The Employer’s appeal followed.

In its request for review, the Employer admitted that proof of worker’s compensation insurance was not submitted to the CO because the Employer “forgot to send in . . . proof.” AF 2. On July 9, 2010, the Employer submitted a copy of worker’s compensation insurance with an effective date of January 15, 2010, and an expiration date of January 15, 2011.³

Discussion

An employer seeking labor certification must submit proof of workers’ compensation insurance coverage prior to the “issuance of the temporary labor certification.” 20 C.F.R. § 655.122(e). In the present case, the NOA provided that the Employer must submit proof of insurance coverage at the time that the recruitment report was due. AF 10.

¹ Citations to the 57-page Administrative File will be abbreviated “AF” followed by the page number.

² Before the application was accepted for processing, the Employer made modifications pursuant to a Notice of Deficiency issued on May 28, 2010. However, the Employer corrected the deficiencies, and they are unrelated to the present appeal. AF 12-22; AF 7-11.

³Both the CO and the Employer were allowed to file a brief. The Employer chose not to submit a brief, but rather submitted the insurance policy on the deadline for filing briefs.

The Employer admits in its request for review that it did not send in the proof of insurance as required by the regulations. Although it is clear from the Employer's request for review that it did in fact have the proper documentation,⁴ the Board is limited to reviewing only the "written record" as it appeared before the CO. 20 C.F.R. 655.171(a). Likewise, the Board cannot force the CO to accept documentation submitted after the Final Determination was issued. Since the Employer failed to submit the required documentation to the CO, certification was properly denied.

Order

In light of the foregoing, it is hereby **ORDERED** that the Certifying Officer's decision is **AFFIRMED**.

For the Board:

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WILLIAM S. COLWELL
Associate Chief Administrative Law Judge

⁴ The Employer's insurance policy failed to cover approximately the last six weeks of the Employer's date of need.