

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 12 July 2010

OALJ Case No.: 2010-TLC-00050

ETA Case No.: C-10148-24333

In the Matter of

JENERATION FOODS—JENNY GERETY,
Employer

Certifying Officer: William L. Carlson
Chicago Processing Center

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

DECISION AND ORDER
AFFIRMING DENIAL OF CERTIFICATION

On June 28, 2010, Jeneration Foods—Jenny Gerety, (“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 2, 2010, 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 May 28, 2010, the United States Department of Labor’s Employment and Training Administration (“ETA”) received an application from Jeneration Foods—Jenny Gerety, (“the Employer”) for temporary labor certification. AF 145.¹ In particular, the Employer requested certification for seven “Farmworkers, Farm and Ranch Animals” between July 16, 2010, and April 15, 2011. *Id.* The Employer’s application was accepted for processing on June 14, 2010.² AF 54-58. 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 57.

In its response to the Notice of Deficiency on June 10, 2010, the Employer included a letter from Matt Koster of the Cline Wood Agency. AF 88. The letter stated that Mr. Koster was the acting agent “who places the workmen’s compensation policy for [the Employer], [and Mr. Koster] can confirm the [Employer] will be offered a renewal policy with Liberty Mutual Insurance for the 7/1/10-7/1/2011 policy term.” AF 88. On June 18, 2010, the CO notified the Employer via email that:

On May 28, 2010, the CNPC received an H-2A Application for [the Employer] along with a copy of their workers’ compensation documentation. However, the policy dates of the workers’ compensation insurance do not cover the contract period. The period of intended employment starts on July 16, 2010, and ends on April 15, 2011, and the workers’ compensation policy is valid until July 1, 2010.

Since the employer’s provided proof demonstrates that the workers’ compensation coverage expires before the employer’s date of need on the Application for Temporary Employment Certification, the CNPC must have a signed written

¹ Citations to the 165-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 June 4, 2010. AF 112-133. However, the Employer corrected the deficiencies, and they are unrelated to the present appeal.

assurance from the employer indicating that they will renew their policy to carry coverage to the end of the contract period specified on the H-2A application.

AF 33.

On June 24, 2010, the CO denied the Employer's application for temporary labor certification. AF 10-12. The CO stated in its denial letter that "the employer provided documentation of its workers' compensation coverage. However, the policy expiration date is July 1, 2010, which is before the employer's start date of need: July 16, 2010." AF 12. The CO also noted the letter from Mr. Koster, but the CO also indicated that the Employer had not signed an "attestation of policy renewal." *Id.* Because the Employer failed to provide the required written assurance, the CO denied the Employer's application. The Employer's appeal followed.

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.

It is undisputed that the Employer submitted proof of insurance which ended approximately two weeks prior to the Employer's start date, and that the Employer provided a letter from its insurance agent that the Employer would be offered a renewal for its policy that would cover the date of need. In its request for review, the Employer stated that "the Department of Labor was informed that we would provide them with a copy of the new insurance [policy] as soon as it was received."³ Today, June 28, 2010, we received the [new policy]." AF 1. The CO, however, did not require that the Employer submit a new policy. Rather, he simply wanted a written assurance that when Mr. Koster offered the Employer a renewal, the Employer would renew the workers' compensation policy. The letter from Mr.

³ Although the Employer has proven that it renewed the policy, our review is limited to only the information before the CO at the time the Final Determination was issued.

Koster would not suffice as an assurance of renewal, as the CO's June 18, 2010 email stated, because the assurance needed to be signed by the Employer, not its insurance agent. Mr. Koster's letter would not suffice because it represented only an offer of insurance, not a guarantee the Employer would accept the renewal. Nor, as the Employer implied in its request for review, did the CO require the new policy. Instead, the Employer needed to only submit a signed statement that it would renew the policy at the appropriate time during the certification process. The Employer failed to offer this assurance, and therefore, the CO properly denied certification.

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