



Issue Date: 04 September 2019

BALCA Case No.: 2019-TLN-00145
ETA Case Nos.: H-400-19184-014448

In the Matter of:

DFW FRAMING & CONSTRUCTION, INC.,

Employer.

ORDER REMANDING CASE

On August 2, 2019, the Board of Alien Labor Certification Appeals (“BALCA”) received a request for administrative review from DFW Framing & Construction, Inc. (the “Employer”), requesting administrative review of the Certifying Officer’s Final Determination in the above-captioned H-2B temporary labor certification matter. BALCA docketed the appeal on August 2, 2019. I issued a *Notice of Assignment and Expedited Briefing Schedule* on August 12, 2019, noting that Employer had requested administrative review, that the case had been docketed and assigned to me, that the Appeal File had not yet been received, and that the CO could file a brief within seven business days of receipt of the Appeal File.

Under 20 C.F.R. § 655.61, an employer may request administrative review before BALCA of a determination by the Certifying Officer (“CO”) by sending a copy of the request to BALCA, with a copy simultaneously sent to the CO who issued the determination, within 10 business days from the date of determination. 20 C.F.R. § 655.61(a)(1). “Upon the receipt of a request for review, the CO will, within 7 business days, assemble and submit the Appeal File using means to ensure same day or next day delivery, to the BALCA, the employer, and the Associate Solicitor” *Id.* § 655.61(b). BALCA “must review the CO’s determination only on the basis of the Appeal File, the request for review, and any legal briefs submitted” *Id.* § 655.61(e).

To date, the Appeal File in this case has not been received. When the Appeal File was not received following seven business days of the request for review, BALCA’s docketing division sent an email to the CO on August 19, 2019, inquiring as to the status of the Appeal File, and received a response from the CO on August 20, 2019, stating that “[n]othing has been done on this one because we never got notified of an appeal. Can you send that to us?”¹ As the CO was served with the *Notice of Assignment and Expedited Briefing Schedule* issued in this

¹ The email to the Office of Administrative Law Judges with Employer’s request for administrative review does not reflect simultaneous service by email upon the CO.

matter on August 12, 2019, that document notified the CO of the existence of an appeal in this matter, even if the CO did not receive a copy of Employer's request for administrative review. In any event, BALCA's docketing division emailed a copy of Employer's request for administrative review to the CO on August 20, 2019. More than seven business days have passed since the request for review was provided to the CO, but the CO still has not assembled and submitted the Appeal File in this matter.² BALCA's docketing division sent inquiries regarding the status of the Appeal File on August 26, August 27, and August 30, but received no responses to those inquiries.

As set forth above, administrative review of the CO's determination under Section 655.61 is limited to the Appeal File, the request for review, and any legal briefs submitted. Without the Appeal File, BALCA cannot conduct meaningful administrative review of the Employer's challenge to the CO's determination in this matter. Thus, the failure to file the Appeal File in accordance with the regulations has prejudiced Employer's ability to obtain administrative review under 20 C.F.R. § 655.61.

Section 655.61(e) permits BALCA to affirm the CO's determination, reverse or modify the CO's determination, or remand to the CO for further action. Without the Appeal File, BALCA cannot adjudicate whether the CO's determination should be affirmed or reversed. I find that the appropriate course of action, where no Appeal File has been submitted, is to remand this case to the CO for further action.

THEREFORE, IT IS ORDERED that this matter is REMANDED to the CO for further action.

SO ORDERED.

For the Board:

MONICA MARKLEY
Administrative Law Judge

MM/jcb
Newport News, VA

² The seventh business day after August 20 was Thursday, August 29, 2019.