

# U.S. Department of Labor

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**Issue Date: 03 July 2013**

CASE NO.: 2012-TNE-00006

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION,  
UNITED STATES DEPARTMENT OF LABOR,  
Prosecuting Party

v.

ED BAYER DESIGN GROUP,  
Respondent

Before: Thomas M. Burke  
Administrative Law Judge

## DECISION AND ORDER

This case arises under the H-2B provisions of the Immigration and Nationality Act (“INA”), as amended, 8 U.S.C. §§ 1101(a)(15)(H)(ii)(B) (“H-2B”) and 8 U.S.C. § 1182(n)(2001) (“Act”) and the implementing regulations promulgated under 20 C.F.R. Part 655, subpart A.

The H-2B visa program is a voluntary program that permits employers to hire foreign workers to come temporarily to the United States and perform non-agricultural work on a one-time, seasonal, peak load or intermittent basis. *See* 8 U.S.C. § 1101(a)(15)(H)(ii)(b); 20 C.F.R. Part 655. Employers seeking to employ H-2B workers must provide certain information to the Department of Labor (“DOL”) to allow the DOL to certify that (1) there are not sufficient U.S. workers who are capable of performing the temporary service or labor at the time of filing the petition for H-2B classification and at the place where the foreign worker is to perform the work; and (2) the employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers.

Employers applying for a temporary labor certification from the DOL must first obtain a prevailing wage determination, which is the minimum wage that must be offered to all potential workers and paid to any H-2B workers. *See* 20 C.F.R. § 655.10. The employer must then submit the Application and a recruitment report to the ETA. *See* 20 C.F.R. § 655.20. The ETA reviews these documents in determining whether to issue a temporary labor certification. Once issued, the certification is used by the employer to support its Form I-129 petition to the U.S. Citizenship and Immigration Services for H-2B visas. The certification “is valid only for the number of H-2B positions, the area of intended employment, the specific services of labor to be

performed, and the employer specified on the [Application] and may not be transferred from one employer to another.” See 20 C.F.R. § 655.34.

On January 23, 2012, the Administrator issued a Summary of Violations and Remedies to Respondent, Ed Bayer Design Group, LLC, assessing \$9,372.02 in back wages owed to H-2B visa workers and a civil penalty in the amount of \$17,482.92 for four separate violations it found based on Respondent’s H-2B visa application. The January 23, 2012 determination found that Respondent violated the H-2B provisions of the INA regarding an Application for Temporary Employment Certification through: a willful misrepresentation of a material fact on the Application regarding the dates of temporary need and number of workers; a willful misrepresentation of a material fact on the Application regarding job requirements and duties; a substantial failure to meet a condition on the Application regarding prohibited fees paid by workers; and a substantial failure to meet a condition on the Application regarding unreasonable deductions.

On February 7, 2012, Respondent objected to the Administrator’s findings and requested a hearing under 20 C.F.R. § 655.71. A hearing was scheduled for September 18 and 19, 2012, in Pittsburgh Pennsylvania. The Administrator requested a continuance of the hearing until October 23-24, 2012 to allow additional time for the completion of discovery. The hearing was continued by *Order Granting Continuance and Rescheduling Hearing*, dated August 22, 2012.

On October 5, 2012, the Administrator filed a *Motion for Sanctions* asserting that Respondent did not adequately respond to an August 27, 2012 Order requiring discovery responses. The Administrator’s motion asserted that Respondent did not produce documents required by the Order and did not identify witnesses it would call at hearing. The Administrator’s motion for sanctions was granted in part. The Administrator also submitted a second motion to continue hearing on October 9, 2012, to allow time for a ruling on the Administrator’s motion prior to hearing. The hearing was continued to December 5, 6, 2012, by Order dated October 10, 2012, and By *Order Granting Motion For Sanctions In Part*, issued on November 23, 2012, Respondent was precluded from offering into evidence any documents not previously provided to the Administrator. The Administrator’s request that Respondent’s witnesses be limited to Ed Bayer was denied.

On November 1, 2012, the Administrator filed a Motion for Summary Judgment. The motion was granted in part and denied in part by Order dated November 27, 2012 as it was determined that there were genuine issues of material fact that needed to be decided. See *Order Denying In Part Administrator’s Motion For Summary Decision*.

A hearing was held on December 5, 2012, in Pittsburgh, Pennsylvania. A few days before the hearing, the undersigned received a telephone call from counsel for the Respondent stating that he was told by his client that he was not authorized to attend the hearing on behalf of the Respondent, and that he was not certain about whether Ed Bayer would appear on behalf of Respondent. Respondent’s counsel stressed that he was not asking for a continuance, merely notifying the Court that he would not be present. Respondent’s counsel was informed that the hearing would proceed without him. (Tr. 5). The Administrator submitted a post hearing brief on January 31, 2013.

## FINDINGS OF FACT

On December 24, 2009, Respondent submitted to the Department of Labor an application for 16 H-2B visas to employ temporary nonimmigrant alien workers as “Landscaping and Grounskeeping [sic] Workers,” between April 1, 2010 and December 15, 2010. This application included a description of the job duties, which read “[m]ow, cut, water, and edge lawns, rake and blow leaves; dig holes and trenches, pull, chop weed; prune and haul topsoil and mulch.” It also affirmed that Respondent was represented by an agent, “Amigos Labor Solutions, Inc.,” and included a certification by Ed Bayer as president of Respondent. By his signature he certified, among other things, that the offered terms and working conditions were normal to workers similarly employed; that the offered wage was equal to or greater than the highest of the prevailing wage or the applicable federal, state, or local minimum wages; that Respondent would comply with applicable labor-related laws and regulations; that Respondent, its agents, and its attorneys had neither sought nor received payment from employees for “any activity related to obtaining labor certification, including...application fees, or recruitment costs”; that the dates of temporary need and number of workers requested were truly and accurately stated on the application; that he took full responsibility for the accuracy of any representations made by his agent; and that to the best of his knowledge the information contained in the application was true and accurate. (GX 3). The Department of Labor reviewed and certified the application on January 21, 2010. (GX 4).

In August of 2010, the Wage and Hour Division, U.S. Department of Labor, received a complaint that employees of Respondent were not being paid in compliance with the H-2B provisions. (Tr. 18). Consequently, Joseph Doherty, Assistant District Director Wage and Hour Division, accompanied by investigator Cynthia Horton, traveled to the house where all eleven of the H-2B workers resided, to interview the workers. (Tr. 73). The workers rented the house from Respondent throughout the course of their employment. Respondent deducted the rent payments from their paychecks. While there, Doherty and Horton observed that the house was in a state of dangerous and filthy disrepair, the details of which they memorialized in an affidavit the next day. (GX 13, 14). A more general investigation began which culminated in the Administrator’s issuance of the January 23, 2012 Summary of Violations and Remedies to Respondent.

### *DEDUCTION OF HOUSING COSTS FROM PAYCHECKS*

Under the Act and regulations, an employer must not make deductions from its employees’ paychecks which would violate the Fair Labor Standards Act (“FLSA”). 20 C.F.R § 655.22(g)(1). Under the FLSA, an employer may not charge for the cost of lodging where the facilities are furnished in violation of any law. 29 C.F.R § 531.31. Thus, an employer subject to the FLSA would violate § 531.31 if it took deductions for the cost of lodging if the lodging violates a local zoning ordinance or state housing code. Respondent and the H-2B employees are subject to the FLSA, as they do not fall into any of the coverage exceptions outlined in that act. *See generally* 29 U.S.C. § 213.

Under Pennsylvania health code, the building which Bayer furnished for his employees would be considered a “lodging house,” which is defined as “[a] building or portion thereof in

which five or more persons, not related to the proprietor or manager, are furnished with sleeping accommodations.” 20 Pa. Code § 20.1. It is the responsibility of the owner of a lodging house to “keep the entire building in repair including the plumbing, lighting, heating and ventilating systems,” and to “keep the entire building in a cleanly condition, free from an accumulation of dirt, garbage or other refuse matter.” 20 Pa. Code § 20.3.

Juan Javier Guerrero Gomez, one of the H-2B workers living in the house, provided a transcribed statement over the telephone on September 28, 2012, describing the house where the 11 workers lived. (GX 44). He described the house as very small, one floor, two bedrooms, one living room and one basement. (GX 44 at 21, 29). He stated that the sewage backed up and smelled disgusting; that the sewage including excrement would back up and pool in the basement to 20 or 30 cm. He stated further that the deplorable conditions in the house existed when they arrived in March, 2010. (GX 44 at 26-30).

Gomez’ statement was corroborated by the testimony of Doherty. Doherty testified to his observations of the house:

And what I had seen at this house on Maynard Road was way beyond anything I've ever seen deteriorate in a single season. Usually, over a single season you'll see a large collection of trash, you'll see an array of flies and so forth and leaving food out in the kitchen and the trash can really not being there. And what we observed here was just a complete aura of disrepair. There were holes in the floor, there were large amounts of mold. The house was definitely overcrowded. We had couples sleeping in the living room divided by a sheet. It was in such a state that we actually made the decision to conduct the interviews outside, so that we wouldn't be in there, where the air would actually be somewhat fresh.

And even then, with things that we observe in terms of the infestation of insects and a lamp without the male end on it that just had a wire, that when it got so dark that Cindy couldn't really see anymore, they just took this cord without an end on and stuck it into the socket so we could see to do the interviews. It was just -- everything we saw -- but what we saw was not the result of a group of men being left to their own devices for three months. It was such a state, it had to have occurred over a much longer period of time.

(Tr. 74).

Doherty testified that the Administrator’s best remedy under the Act, since H-2B is nonagricultural, was to invalidate Respondent’s deduction for housing. Doherty’s office did contact the Allegheny County housing inspector but was told that the housing inspector would need a complaint from the residents themselves, and a complaint would risk eviction. (Tr. 77).

The Administrator’s argument that Employer’s deductions from the workers’ pay were unreasonable and violated § 655.22(g)(1) in light of the conditions of the lodging is accepted. The Administrator’s argument that deductions from the workers’ pay were contrary to the FLSA

is also accepted. Under the FLSA, an employer may not charge for the cost of lodging where the facilities are furnished in violation of any law. 29 C.F.R § 531.31. The testimony clearly shows that the lodging violates the state housing code, 20 Pa. Code § 2, which requires the owner of a lodging house to “keep the entire building in a cleanly condition, free from an accumulation of dirt, garbage or other refuse matter.” 20 Pa. Code § 20.3. The Administrator’s finding that Respondent’s withholding of a total of \$2,728.84 from the workers’ paychecks was contrary to § 655.22(g)(1) is supported by the record.

The Administrator also assessed a \$2,728.84 civil penalty for this violation of § 655.22(g)(1). Doherty testified that for violations that require payment of back wages the Administrator has opted to correlate the back wages directly to the civil penalty. Here, the assessed civil penalty is equal to the back wages. The Administrative Review Board has held in *Amtel Group of Florida, Inc. v. Yongmahapakorn*, ARB No. 04-087, 2006 WL 2821406 (ARB Sept. 29, 2006) that because the Administrator is vested with enforcement discretion and considers the totality of circumstances in fashioning remedies appropriate to the violation, and may impose such other administrative remedies as the Administrator determines to be appropriate, including back wages to workers who have been displaced or whose employment has been terminated in violation of these provisions, the Administrator's calculations should not be disturbed unless they are arbitrary or evidence an abuse of discretion. Accordingly, the \$2,728.84 civil penalty for violation of § 655.22(g)(1) is affirmed as it is supported by the evidence, and is neither arbitrary nor an abuse of discretion.

#### *PROHIBITED DEDUCTION OF FEES AND EXPENSES FROM WORKERS*

Respondent’s application certified that “the employer and its agents and/or attorneys have not sought or received payment of any kind from the employee for any activity related to obtaining labor certification, including...application fees, or recruitment costs.” (GX 3). Nevertheless, H-2B worker Gomez provided to the Wage and Hour investigator a copy of a receipt for a payment of \$176.00 to Ed Bayer. (GX 30). Gomez stated in his transcribed statement that the \$176.00 was for the services of LLS Visa Electronica. (GX 39 at 18-20). Investigator Cynthia Horton testified that she interviewed Gomez and that he told her that the \$176.00 was a fee for services provided by LLS Visa for application fees, paperwork and anything else LLS Visa did for him. (Tr. 92). Horton also interviewed the other workers, and every one she spoke to told her they had paid a fee for the Temporary Employment Certification, and none told her that they had been reimbursed. Her review of the payroll records showed no reimbursement, and she saw no documents indicating reimbursement from Respondent. (Tr. 87). Horton saw the contract between the H-2B workers and LLS Visa Electronica which disclosed the fees that LLS charged the workers for administrative and other fees. Horton explained that Amigos Labor Solutions, the agent for Respondents, contracts with LLS Visa Electronica to recruit Mexican Workers. (Tr. 88, 89; GXs 20, 35).

Bayer admitted during his deposition that he did not police his agent in this regard, and when shown a copy of a receipt for \$176.00 paid to “LLS Visa Electronica,” to the order of Ed Bayer, for visa costs and “administrative charges” by one of his H-2B workers, he responded that he had never received the checks therein described, nor seen anything like those receipts before. (GX. 38, at 49). He said that he did not knowingly charge any such fees, nor did he know that

his agent was charging them. (GX 38 at 52) He also admitted that he had never considered adding a provision in the contract between Respondent and its agent, Amigos Labor Solutions, prohibiting the latter from collecting these fees or similar. (GX 38, p. 52-53).

Horton's review of prohibited fees and expenses that the workers paid disclosed a total \$285.00 per worker. (Tr. 93, 94). However, the Administrator decided not to seek reimbursement for the amount of \$285.00 times eleven workers. Rather, the Administrator seeks a total payment of \$754.08 as amount owed in back wages for this violation, because the Administrator decided to give Respondent credit for wages it paid the workers over and above the prevailing wage it was required to pay. (Tr. 98, 99). The assessment of \$754.08 as reimbursement for prohibited fees and expenses is supported by the evidence and it is neither arbitrary or an abuse of discretion.

The Administrator also assessed a \$754.08 civil penalty for this violation. The civil penalty is supported by the evidence and it is neither arbitrary nor an abuse of discretion.

#### *MISREPRESENTATIONS ON APPLICATION FOR (H)(II)(B) VISAS*

The Administrator's determination asserts three violations involving misrepresentations on the (H)(ii)(b) application. Misrepresentation regarding number of workers needed and the dates of temporary need, drug testing requirements, and job duties.

##### *Number of Workers Needed*

This alleged violation as described in the Summary of Violations and Remedies is twofold: that Respondent misrepresented dates of temporary need, and that Respondent misrepresented the number of work positions needed. (GX 1).

Ed Bayer, as president of Respondent, certified that the number of workers for whom he requested visas on his application, i.e. sixteen, was truly and accurately stated. The Administrator found that Respondent willfully misrepresented the numbers of workers that it needed because it brought in only eleven workers and never replaced them as they left. Bayer testified by deposition that he requested 16 workers because of his projection of need based on pending contracts. However, Bayer acknowledged during his deposition testimony that he had utilized the H-2B program in past years and had hired only between 7 and 11 workers. (GX 38 at 55, 56). He also acknowledged that his business has been pretty steady and has not increased substantially over the recent years. (GX 38 at 58). Bayer testified that his projection was based on "gut, based on projections or proposals that are out there." (*Id.*). Doherty testified that he reviewed Respondent's gross dollar volume over past three years and found Respondent's gross revenue over that period to be consistent. (Respondent is required to submit such information in its "employment letter").

A second reason offered by Bayer for employing fewer workers than requested is the nature of the program. He testified that after he files the application for H-2B workers, he then places an ad in newspapers for American workers, and he doesn't know the outcome of the search for American workers. However, Bayer did not expand on the actual effect of the search

for American workers on the number of H-2B that he hired. If he had hired a number of American workers thereby lessening his need for H-2B workers, he kept the information to himself.

Doherty testified that it is of particular importance for the H-2B program that the number of H-2B workers requested be accurate because there is a hard cap on the number of H-2B workers that are permitted to enter the country each year. (Tr. 19, 48). Once a specific number of visas are allocated, fewer visas remain for another Employer or for another worker.

#### *Dates of Need*

Bayer certified that the dates of temporary need listed on his application for H-2B visas, April 1 through November 30 of 2010, were truly and accurately stated. (GX 3). GX 43 is a chart showing the weeks when the eleven workers started and when they ended their employment. Five of the workers began with the workweek ending May 2, 2010, the other six started in the middle of May. As to the ending date, only four left in November as intended by the application. Four left in August and three left in September.

The record is clear that Respondent did not employ the H-2B workers for the time period listed on his application. The Administrator asserts that a civil penalty should be assessed because Respondent intentionally misrepresented the dates of need. The Administrator argues that Respondent did not direct his recruitment agency to insure the workers would be available during the requested time period, and further, that the payroll records show that the workers who left early – August or September - left because there was no work. Doherty testified that Respondent's records show that these workers were not working to their full capacity a full five weeks before they left. Doherty also testified that the workers' interviews revealed that they left because of the diminishing hours of work and the horrible living conditions. (Tr. 46). These records and the workers' statements contradict Bayer's deposition testimony that the workers left for home voluntarily even though Respondent had work for them.

The Administrator assessed a civil penalty of \$4,000 for Respondent's willful misrepresentation of the number of work positions needed and the dates of temporary need. Doherty testified to the methodology used to assess the civil penalty: when assessing a maximum \$10,000 penalty his agency starts with a baseline of \$5,000, then raises or lowers the penalty after reviewing the requirements of 20 CFR Part 655.65(g) (Tr. 32). In the present case, Doherty reduced the penalty in light of Employer's commitment to future compliance with the H-2B regulations, since Bayer agreed that Respondent was not going to use the program in the future; and because the gravity of the violations did not rise to a level of seriousness compared to other violations. The Administrator's finding of willfulness to the extent that Respondent's misrepresentation justifies a \$4,000.00 civil penalty is supported by the evidence as the finding is neither arbitrary or an abuse of discretion.

#### *Drug Testing Requirements*

Bayer certified on his application for H-2B visas that workers "must be able to pass [a] drug test." (GX 3). Respondent advertised the position in the local newspaper with this

requirement. However, the Administrator contends that Respondent violated his certification because it never intended for the H-2B workers to be subject to drug testing. Doherty testified that a concern of the Administrator is that a drug testing provision in the job advertisement for American workers would discourage applicants. (Tr. 69). Gomez states in his statement that he was never advised that he would have to take a drug test. (GX 44 at 9). Bayer admitted during his deposition that none of the H-2B workers were required to actually undergo a drug test, while similarly situated American workers were. (GX 38 at 25-31). Bayer testified that this disparity between the treatment of American and H-2B workers was actually the result of a random-selection drug testing program Respondent participates in through the University of Pittsburgh Medical Center, known as "HAPPI." (*Id.*). Doherty testified that Respondent never supplied any documentation of the drug testing program even though Bayer was specifically requested to submit the documentation. (Tr. 68; GX 45). Doherty also testified that he contacted the director of the HAPPI program to vet Respondent's assertion that all its workers were always eligible to be drug tested. Specifically, he asked if any of the names of the eleven H-2B workers were submitted to the program. The response from the program was that those names were not submitted and in fact the only name submitted was that of Ed Bayer. (Tr. 64, 65).

Doherty assessed a civil penalty of \$4,500. He explained that he started with a penalty of \$5,000, then reduced it by \$500.00 because of the commitment to comply in future inasmuch as Bayer stated he would not use the program in the future. (Tr. 69). The \$4,500.00 civil penalty assessment for finding that Respondent violated its certification by never intending to subject the H-2B workers to drug testing is affirmed as supported by the evidence and it is neither arbitrary or an abuse of discretion.

### *Job Duties*

Bayer certified on his application form that the job duties required of the H-2B workers were "lawn scalping, mulching of trees, shrubs and flower beds, defining of beds and lawns, as well as replacing trees and shrubs damaged by the winter[, m]owing, trimming, fertilizing and weeding of lawn areas...raking and blowing of debris...constant planting of seasonal color, shrubs, sod and trees," and "leaf clean-up." (GX 3). However, the testimony of Doherty, the statement of Gomez, and the testimony of Bayer himself, documents that the H-2B workers actually performed other duties than those listed in the application, including unloading trucks, carrying gravel, limestone, bricks, dirt, and stone by hand or in a wheelbarrow, mixing mortar, flattening dirt surfaces to prepare the surface for paving, and sweeping Polysand over paving stones to act as a binder. (G 38 at 32-33; GX 39, at 10; Tr. 52).

Bayer testified that, in his mind, all of these job duties, listed and unlisted, fell under the same category: "general labor" or "labor activities." (GX 38, at 34-35, 45, 81-84). He also admitted that, in his company's time sheets and marketing materials, he had in the past distinguished "softscape" work, involving plants and soil, from "hardscape" work, involving "anything hard in the landscape industry...[a]ny hard materials, not related to plants or soil." (GX 38 at 36-39, 81-84). This is qualitatively different work from the work certified by his application. (GX 21C).

Bayer's testimony also amounts to an admission that he knew at the time that he signed the application that this job description was inaccurate (or would have known this if he had read it with an eye to accuracy). While he did testify that the job description was "true and accurate" and that he "didn't know that" the job duties as listed "weren't accurate," the substance of his testimony clearly shows that these bare assertions were untrue. (GX 38 at 43, 76). When asked, "Why didn't you list the [hardscape duties], if you knew that you were going to have [the workers] do [hardscape work]?", Bayer responded with his reasons for not listing the hardscape duties, but did not correct the question's explicit assumption that he had known at the time of application that he was going to have the workers do hardscape work. (GX 38, at 43). Even though Bayer admitted that he understood the difference between softscape and hardscape work, and that he knew his H-2B workers would do both, he admitted explicitly that he did not check the accuracy of, let alone make any changes to, the all-softscape "boilerplate" job description supplied by his agent before certifying that it was true and correct. (GX 38, at 42-44, 76, 81-84).

Thus, there is nothing to dispute that Bayer was reckless as to the truth of the statements he certified as true in that he, by his own admission, failed to review the job description supplied by his agent, knowing that there was a qualitative difference between the two categories of job duties. Reckless disregard is considered to be willfulness under the Act and regulations. 20 C.F.R. §655.65(e). Thus, the uncontested facts show that Respondent willfully misrepresented the job duties on the application for (H)(ii)(b) visas.

The Administrator calculated the total back wages owed to the H-2B workers as \$5,889.10. Doherty testified that he calculated the back wages by determining the number of hours that the H-2B workers did hardscape work and number of hours they did softscape work by referring to the time sheets of Respondent. (The timesheets distinguished between each type of work) Tr. 58; GX 27. He multiplied the hours of softscape work by \$8.27 per hour, the prevailing wage submitted in the application, and he multiplied the hours of hardscape work by \$10.29 per hour, the prevailing wage for the hardscape work. The prevailing wage used for the hardscape work was provided by ETA in response to request from Doherty for a prevailing wage for a combination of softscape and hardscape work. The work was described through job descriptions from Respondent. (Tr. 54, 55). The assessment of \$5,889 as the total back wages owed to the H-2B workers by the Administrator is supported by the evidence and it is neither arbitrary or an abuse of discretion.

## **ORDER**

Accordingly, it is hereby ORDERED that:

1. The Administrator's Determination pursuant to 20 C.F.R. Part 655. Subpart A – H-2B Temporary Employment in Occupations Other Than Agriculture or Registered Nursing under the Immigration and Nationality Act finding that Respondent owes back wages in the amount of \$9,372.02 to eleven H-2B non-immigrant workers, and owes a civil penalty in the amount of \$17,482.92 is affirmed; and

2. Respondent shall pay the sum of \$26,854.94 to Wage and Hour Division, U.S. Department of Labor no later than 30 days after the date of this determination, unless an appeal is requested as instructed below.

THOMAS M. BURKE  
Administrative Law Judge

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review (“Petition”) that is received by the Administrative Review Board (“Board”) within thirty calendar days of the date of issuance of the administrative law judge’s decision. *See* 20 C.F.R. § 655.76(a). The Board’s address is:

Administrative Review Board  
U.S. Department of Labor  
Room S-5220  
200 Constitution Ave, NW  
Washington, D.C. 20210

At the time you file the Petition with the Board, you must serve it on all parties to the case as well as the administrative law judge. 20 C.F.R. § 655.76(a).

No particular form is prescribed for the Petition, however, any such petition shall:

- (1) Be dated;
- (2) Be typewritten or legibly written;
- (3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;
- (4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;
- (5) Be signed by the party filing the petition or by an authorized representative of such party;
- (6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and
- (7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Board in determining whether review is warranted.

20 C.F.R. § 655.76(b). If the Board determines that it will review the ALJ's decision and order, it will issue a notice specifying (1) The issue or issues to be reviewed; (2) The form in which submissions shall be made by the parties (e.g., briefs); and (3) The time within which such submissions shall be made. When filing any document with the Board, the party must file an original and two copies of the document. 20 C.F.R. § 655.76(e).