

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 19 March 2012

CASE NO.: 2006-WPC-2
2006-WPC-3

In the Matter of:

DAISY ABDUR-RAHMAN,
RYAN PETTY,

Complainants

v.

DEKALB COUNTY,

Respondent

DECISION AND ORDER DENYING MOTION FOR RECONSIDERATION

On January 17, 2012, I issued a Decision and Order on Damages on Remand in which I ordered Respondent to pay Complainant Daisy Abdur-Rahman \$9,309.53 in back pay and \$11,689.14 in interest and pay Complainant Petty \$51,928.42 in back pay and \$80,499.38 in interest.

By letter dated January 27, 2012, Respondent notified the court that I had made an error calculating interest on back pay. I treated this letter as a motion for reconsideration and notified the parties to that effect on January 31, 2012. On February 13, 2012, Complainants filed a response to Respondent's Motion for Reconsideration dated January 27, 2012. Complainants agreed that the interest rates used in the Decision and Order on Damages on Remand should be divided by four to arrive at the appropriate interest rate for each quarter. By order dated February 17, 2012, I granted Respondent's Motion for Reconsideration given that both parties were in agreement that I incorrectly calculated Complainants' back pay interest.

On February 28, 2012, Complainants filed a Motion for Reconsideration of Decision and Order on Motion for Reconsideration Dated February 17, 2012. Complainants ask for reconsideration because counsel for both the complainants and the respondent were mutually mistaken in their belief that the interest rates used in my Decision and Order on Damages on Remand dated January 17, 2012, were annual interest rates and not quarterly interest rates.

On March 8, 2012, Respondent filed a Response to Complainants' Request for Reconsideration of ALJ Decision on the Proper Interest Rate. Respondent asserts that it was not

a mutual mistake and that it continues to believe that the interest rates used in my January 17, 2012 Decision and Order were the annual interest rates and not the quarterly interest rates. On March 12, 2012, we received a copy of Respondent's Response to ARB Order of March 1, 2012 providing in pertinent part that the ARB requested the parties describe their positions on amending or withdrawing their previously filed Petitions for Review.

On March 15, 2012, Complainants filed a Reply in Support of their Motion for Reconsideration of Decision and Order on Motion for Reconsideration dated February 17, 2012. Although Complainants did not seek permission to file this motion, I have considered their reply in crafting my decision and order.

The authority is split as to whether an administrative law judge has the authority to reconsider an earlier recommended decision and order in a whistleblower case. *Compare Willy v. The Coastal Corp.*, 85-CAA-1 (ALJ Dec. 4, 1997) (finding jurisdiction to correct a clear error in an earlier recommended decision and order) *with Newport v. Siemens Generation Service Co.*, 2009-ERA-4 (Oct. 2, 2009) (declining jurisdiction finding that "[j]urisdiction passes from an Administrative Law Judge to the Secretary of Labor once a recommended Decision and Order is issued").

Twenty-nine C.F.R. § 18.1 provides that, "The Rules of Civil Procedure for the District Courts of the United States shall be applied in any situation not provided for or controlled by these rules, or by any statute, executive order or regulation." The Federal Rules of Civil Procedure 59(e) allows for reconsideration in limited circumstances. Motions for reconsideration will not be granted absent "highly unusual circumstances" and such motions do not provide litigants with an opportunity for a "second bite at the apple."¹ See *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999); *Sequa Corp. v. GBJ Corp.*, 156 F.3d 136 (2d Cir. 1998); *Bhatnagar v. Surrendra Overseas Ltd.*, 52 F.3d 1220, 1231 (3d Cir. 1995); *Senza-Gel Corp. v. Seiffhart*, 803F.2d 661, 664 (Fed. Cir. 1986).

As reconsideration is an extraordinary remedy and I have already granted reconsideration once before as to this very issue,

IT IS ORDERED that Complainants' motion for reconsideration is DENIED.

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RICHARD A. MORGAN
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review

¹ Under Fed. R. Civ. P. 59(e) a district court may reconsider and amend a previous order. However, this is "an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (internal quotations omitted).

Board ("the Board") within 10 business days of the date of this decision. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt.

The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Ave., NW, Washington, DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. *See* 29 C.F.R. §§ 24.109(e) and 24.110.

