



In the Matter of:

NAVEEN VUDHAMARI,

ARB CASE NO. 2021-0018

PROSECUTING PARTY,

ALJ CASE NO. 2018-LCA-00022

v.

DATE: April 26, 2021

ADVENT GLOBAL SOLUTIONS,

RESPONDENT.

**Before: Before: James D. McGinley, *Chief Administrative Appeals Judge*;
James A. Haynes and Stephen M. Godek, *Administrative Appeals Judges***

DECISION AND ORDER

PER CURIAM. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101-1537 (2014), and its implementing regulations at 20 C.F.R. Part 655, Subparts H and I (2019). On January 29, 2021, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order on Remand and Ruling on Motion for Disqualification (D. & O. R.), denying in part and granting in part a motion submitted by Respondent Advent Global Systems to dismiss a complaint¹ filed by Prosecuting Party Naveen Vudhamari. On that same date the ALJ issued a Ruling on Administrator's Request for Clarification (R. R. C.), providing guidance on the calculation of interest applicable to the back wages due in this case.

¹ The facts giving rise to this matter are set forth in the ALJ's May 17, 2019 Decision and Order Granting Summary Decision and referenced in our July 30, 2020 Order of Remand (*Vudhamari v. Advent Glob. Sols.*, ARB No. 2019-0061, ALJ No. 2018-LCA-00022 (ARB July 30, 2020)).

Vudhamari filed Petitions for Review of the D. & O. R. and R. R. C. On March 2, 2021, we issued a Notice of Intent to Review that directed Vudhamari to file an opening brief by March 30, 2021. Vudhamari did not file a brief.² To resolve this matter we have reviewed Vudhamari's complaint, Advent's March 15, 2019 Motion to Dismiss, Vudhamari's Response to the Motion to Dismiss (with exhibits), and Vudhamari's Petition for Review and Initial Brief submitted to the Board prior to our remand to the ALJ.³

The Administrative Review Board has jurisdiction to review the ALJ's rulings in this matter.⁴ The Board reviews an ALJ's grant of summary decision de novo.⁵ Under the regulation governing the entry of summary decision, judgment must be entered if the pleadings, affidavits, material obtained in discovery, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.⁶ In reviewing such a motion, the evidence before the ALJ is viewed in the light most favorable to the non-moving party, and the ALJ may not weigh the evidence or determine the truth of the matter.⁷

The ALJ followed the Board's instructions and provided Vudhamari with notice of the requirements for responding to a motion for summary decision. The ALJ considered Vudhamari's pro se status and granted him considerable latitude in responding to various orders, including additional time to file a response to Respondent's Motion for Summary Decision.⁸ But the ALJ concluded that

² Instead of filing a brief in support of his Petition for Review, Vudhamari has filed documents requesting that we proceed to review of this matter. *See* Prosecuting Party's March 8 and 26, 2021 Requests for Extraordinary Action.

³ Prior to our remand this matter was captioned ARB No. 2019-0061. Although Vudhamari failed to file a brief before us or the ALJ following remand, we will consider the brief he filed in ARB No. 2019-0061 as it addresses the claims raised in his complaint.

⁴ Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)), 85 Fed. Reg. 13186 (Mar. 6, 2020).

⁵ *Vinayagam v. Cronous Sols., Inc.*, ARB No. 2015-0045, ALJ No. 2013-LCA-00029, slip op. at 2 (ARB Feb. 14, 2017).

⁶ 29 C.F.R. § 18.72.

⁷ *See, e.g., Vudhamari v. Advent Glob. Sols.*, ARB No. 2019-0061, slip op. at 3.

⁸ D. & O. R. at 3-4.

Vudhamari failed to establish a genuine issue of material fact that would entitle him to a hearing on his complaint.

We have reviewed the ALJ's D. & O. R., R. R. C., and his May 17, 2019 Decision and Order Granting Summary Decision (D. & O.) (collectively, the ALJ's Orders). We conclude that the ALJ's Orders are in accordance with the law and well-reasoned. Therefore, we agree with the ALJ and **ADOPT** and **ATTACH** the ALJ's D. & O. R.⁹ Accordingly, we **DISMISS** Vudhamari's complaint.

SO ORDERED.

⁹ The D. & O. R. incorporates the R. R. C. and D. & O. by reference.



Issue Date: 29 January 2021

Case No.: 2018-LCA-00022

In the Matter of:

NAVEEN VUDHAMARI

Prosecuting Party

v.

ADVENT GLOBAL SOLUTIONS

Respondent

**DECISION AND ORDER ON REMAND
AND RULING ON MOTION FOR DISQUALIFICATION**

1. Jurisdiction and Nature of Order. This proceeding arises under the H-1B nonimmigrant worker program of the Immigration and Nationality Act (INA). 8 U.S.C. §§ 1101-1537; 29 C.F.R. Part 655, Subparts H and I. Pursuant to the directive of the Administrative Review Board (ARB)'s Remand Order, the undersigned provided the Prosecuting Party notice of the requirements for opposing a motion for summary decision and an opportunity to file a response to Respondent's motion seeking summary decision filed March 15, 2019. Despite granting Prosecuting Party an extension, *sua sponte*, Prosecuting Party failed to file a response to Respondent's motion for summary decision. Accordingly, considering no new evidence or arguments have been presented, the undersigned issues this Decision and Order on remand, ratifying, reaffirming, and adopting in full as if fully set forth herein the Decision and Order issued on May 17, 2019. The undersigned also issues this ruling on Prosecuting Party's motion for disqualification.

2. Procedural History on Remand.

a. On March 15, 2019, Respondent filed a Motion to Dismiss on the grounds that Prosecuting Party had failed to state a claim upon which relief could be granted. Although Respondent's filing is styled as a Motion to Dismiss, after considering it in its entirety, the undersigned concluded that Respondent's intent was to file a combined motion to dismiss and an alternative motion for summary decision pursuant to § 18.72. (AX-1)

b. On April 8, 2019, Prosecuting Party filed a reply to Respondent's motion and submitted exhibits in support of his reply. (AX-2)

c. On May 17, 2019, the undersigned issued a Decision and Order Granting Summary Decision, converting Respondent's motion to dismiss to a motion for summary decision and granting summary decision for Respondent. The undersigned denied and dismissed all claims asserted by Prosecuting Party, Mr. Naveen Vudhamari, with prejudice. (AX-3)

d. On July 30, 2020, the ARB reversed and remanded this matter, directing the undersigned to provide Prosecuting Party, as a pro se litigant, with notice that Respondent's motion was being converted to a motion for summary decision and the requirements for opposing a motion for summary decision.

e. On October 6, 2020, this case was returned to the undersigned.

f. Pursuant to the ARB's Remand Order, on October 26, 2020, the undersigned issued Notice Requirements for Opposing Motion for Summary Decision and Order Establishing Response Deadline. This order provided Prosecuting Party 1) the full text of Rule 18.72 of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges; 2) a short, plain statement of the consequences for failing to properly support or address a fact; and 3) thirty (30) days to file a response to Respondent's motion for summary decision. (AX-4)

g. On October 26, 2020, the Administrator filed a Request for Clarification of the proper method for and beginning date of interest calculation by the Wage and Hour Division on back wages ordered due by the May 17, 2019 Decision and Order.¹

h. On December 1, 2020, the undersigned issued an Order Allowing Response to Administrator's Request for Clarification, giving Prosecuting Party and Respondent fourteen (14) days to file a response to Administrator's request.

i. On December 17, 2020, the undersigned reissued the Notice of Requirements for Opposing Motion for Summary Decision and Order Establishing Response Deadline, upon discovering that Prosecuting Party was inadvertently left off the service sheet for the October 26th Notice. Identical to the original notice, the reissued notice provided Prosecuting Party 1) the full text of Rule 18.72 of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges; 2) a short, plain statement of the consequences for failing to properly support or address a fact; and 3) thirty (30) days to file a response to Respondent's motion for summary decision. (AX-5) On this same day, the undersigned reissued Order Allowing Response to Administrator's Request for Clarification, allowing Prosecuting Party and Respondent an additional fourteen (14) days to file a response to Administrator's request.² (AX-6)

j. On December 11, 2020, and December 29, 2020, Respondent filed duplicative responses to Administrator's request for clarification, agreeing with the position of Administrator.

¹ Administrator's Request for Clarification is being resolved through a concurrent, separate ruling.

² By letter dated December 17, 2020, the undersigned explained to Prosecuting Party that due to confusion regarding OALJ's new electronic service process, he was inadvertently left off the service sheet and thus mistakenly was not served with the October 26th notice or December 1st order.

k. Since remand by the ARB, the Prosecuting Party filed six motions in this proceeding: 1) motion to replace the undersigned as presiding judge; 2) motion asking the undersigned to reject Respondent's December 11, 2020 response; 3) motion asking the undersigned to withdraw the December 17th order allowing response to Administrator's request for clarification; 4) motion asking the undersigned to withdraw the December 17th notice of requirements for opposing summary decision; 5) motion opposing the undersigned's December 17th letter explaining the inadvertence that caused Prosecuting Party not to be served with the undersigned's two previous orders; and 6) a motion asking the undersigned to withdraw a duplicative issuance of the December 17th notice.³ Prosecuting Party filed no evidence in response to Respondent's motion seeking summary decision with these six motions.

l. On December 23, 2020, the undersigned issued a Consolidated Order Deferring Ruling on the Prosecuting Party's new motions filed after remand, finding it would be judicially inefficient to rule on Prosecuting Party's motions before resolving the pending case dispositive motion – Respondent's motion seeking summary decision – particularly since the dispositive motion was the subject of the ARB's Remand Order. Accordingly, for the sake of judicial efficiency, the undersigned deferred ruling on Prosecuting Party's motions until resolution of the pending dispositive motion. The undersigned also reiterated to Prosecuting Party that his deadline for filing a response to Respondent's motion for summary decision remained thirty (30) days from the Order issued on December 17, 2020, as required by that order. (AX-7)

m. On December 29, 2020, Prosecuting Party filed a Response to the consolidated order, raising several arguments in opposition to the order, including that he has not filed numerous motions, but only responded with motions to orders by the undersigned and filings by Respondent, and that the undersigned failed to serve him with the October 26th notice and December 1st order. Prosecuting Party submitted no evidentiary support with this response in opposition to the pending dispositive motion. (AX-8)

n. On January 20, 2021, the undersigned issued an Order Confirming Filing Obligation, confirming Prosecuting Party's response to Respondent's motion seeking summary decision was due January 19, 2021, and response to Administrator's request for clarification was due December 31, 2021. Prosecuting Party was informed that his failure to meet these deadlines is not excused by the fact that he filed various other motions that the undersigned had deferred for ruling. However, due to his status as a pro se litigant, the undersigned granted Prosecuting Party until Monday, January 25, 2021 to file responses and submit evidence in opposition to Respondent's motion seeking summary decision and Administrator's request for clarification. The undersigned further noted that Prosecuting Party's motions and Administrator's request for clarification would be addressed, if necessary, after the undersigned rules on the pending dispositive motion. (AX-9)

o. On January 25, 2020, Prosecuting Party filed a Response to Order Confirming Filing Obligation, urging the undersigned to rule on his prior submissions before issuing a decision on the pending dispositive motion. Prosecuting Party submitted no evidentiary support with this response in opposition to the pending dispositive motion. (AX-10)

³ In light of this Decision and Order on Remand, Prosecuting Party's motions, with the exception of the motion for disqualification (AX-11) which is resolved herein, need not be addressed.

3. Analysis.

a. *Ratification of Approval of Respondent's Motion for Summary Decision.* In its Remand Order, the ARB specifically directed the undersigned to provide Prosecuting Party with a notice containing "(1) the text of the rule governing summary decisions before ALJs (i.e., 29 C.F.R. § 18.72), and (2) a short and plain statement that factual assertions in Advent's submissions will be taken as true unless he contradicts Advent with counter-affidavits or other documentary evidence." The ARB expressed no opinion on the merits of Prosecuting Party's claims.

Consistent with the directive of the ARB, the undersigned issued a notice – first on October 26, 2020 and again on December 17, 2020 – containing these requirements and setting a deadline of thirty (30) days for Prosecuting Party to file a response to Respondent's motion seeking summary decision. On December 23, 2020, the undersigned ordered that Prosecuting Party's response deadline was unchanged by the filing of various motions and thus remained thirty (30) days from the December 17th notice. On January 20, 2021, the undersigned confirmed by order that Prosecuting Party's deadline to file a response to Respondent's motion seeking summary decision had expired, but granted a short extension *sua sponte* due to his status as a pro se litigant. Despite these opportunities, Prosecuting Party repeatedly insisted that his motions be addressed first by the undersigned, and Prosecuting Party filed no response to Respondent's motion seeking summary decision, other than the reply he submitted on April 8, 2019.⁴

The undersigned duly considered the arguments and evidence filed by both parties prior to issuing the Decision and Order on May 17, 2019. Considering Prosecuting Party has submitted no additional argument or evidence not previously considered in opposition to Respondent's motion seeking summary decision, the undersigned ratifies, reaffirms, and adopts the Decision and Order issued on May 17, 2019, for the reasons set forth therein.

b. *Prosecuting Party's Motion for Disqualification of ALJ.* Pursuant to 29 C.F.R. § 18.16(b), "[a] party may file a motion to disqualify the judge. The motion must allege grounds for disqualification, and include any supporting affidavits, declarations, or other documents. The presiding judge must rule on this motion in a written order that states the grounds for the ruling." 29 C.F.R. § 18.16(b). This OALJ rule requiring supporting proof through an affidavit, declaration, or other document is consistent with the Administrative Procedures Act and the Judicial Code which provide for disqualification only upon sufficient showing of bias by affidavit. *See* 5 U.S.C. § 556(b)(3)(requiring "timely and sufficient affidavit of personal bias or other disqualification"); 28 U.S.C. § 144 (requiring "timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice").

Administrative law judges are presumed to act impartially. *Matter of Slavin*, ARB No. 04-088, ALJ No. 2004-MIS-002, slip op. at 16 (ARB Apr. 29, 2005); *see also Billings v. Tennessee Valley Auth.*, Case No. 1991-ERA-12, slip op. at 4 (ARB June 26, 1996)("Under 28 U.S.C. § 144, a judge is presumed to be impartial, and a substantial burden is imposed on the requesting party to prove otherwise."). The Board has held that recusal is appropriate when a party demonstrates that

⁴Instead, Prosecuting Party has chosen to file motions seeking to have the undersigned withdraw the notice required by the ARB.

the ALJ “has a personal bias or prejudice either against him or in favor of any adverse party... or that his impartiality might reasonably be questioned...or that he had a personal bias or prejudice concerning a party.” *Billings*, slip op. at 4. “Absent specific allegations of personal bias or prejudice, neither prior adverse rulings of a judge nor his participation in a prior proceeding are sufficient for recusal.” *Id.*

“The ARB generally presumes that an ALJ is unbiased unless a party alleging bias can support that allegation; and bias generally cannot be shown without proof of an extra-judicial source of bias.” *Matthews v. Ametek, Inc.*, ARB No. 11-036, ALJ No. 2009-SOX-026, slip op. at 3 (ARB May 31, 2012). “Unfavorable rulings and possible legal errors in an ALJ’s orders generally are insufficient to prove bias.” *Matthews*, slip op. at 3 (quoting *Powers v. Paper, Allied-Indus., Chem. & Energy Workers Int’l Union*, ARB No. 04-111, ALJ No. 2004-AIR-019, slip op. at 17 (ARB Aug. 31. 2007)).

As grounds for disqualification, Prosecuting Party generally alleges that the undersigned failed to acknowledge his filings, respond to a similar motion filed May 27, 2019,⁵ and take action in response to the ARB’s remand order.⁶ Prosecuting Party has not shown the undersigned has any personal bias against him based on any extra-judicial source of bias. Each of Prosecuting Party’s allegations involve actions within the scope of regulating, managing, and adjudicating this proceeding through a proper exercise of the powers granted to an ALJ to conduct fair and impartial proceedings. *See* 29 C.F.R. § 18.12(b). Prosecuting Party may not like the undersigned’s administration of this case, but Prosecuting Party has failed to meet his burden to demonstrate the bias or prejudice necessary for disqualification. Accordingly, Prosecuting Party’s motion for disqualification lacks merit and the undersigned will continue to act as the presiding judge over this case.

4. Decision and Order on Remand. After taking action as directed in the ARB’s remand order, the undersigned adopts the legal analysis and conclusions reached in his prior Decision and Order Granting Summary Decision. For the reasons addressed in that decision, the undersigned issues the following specific orders:

a. The Decision and Order Granting Summary Decision issued on May 17, 2019, is ratified, reaffirmed, and adopted in full as if fully set forth herein.

b. Respondent’s Motion to Dismiss and for Summary Decision is granted in part and denied in part. The portion of the motion seeking to dismiss this case for failure to state a claim upon which relief could be granted is denied. The portion of the motion seeking summary decision is granted.

c. Prosecuting Party’s Motion to Replace ALJ is denied.

⁵ This motion was filed after the undersigned issued a Decision and Order Granting Summary Decision on May 17, 2019, which dismissed all claims in this matter.

⁶ This case was returned to the undersigned on October 6, 2020, and the undersigned issued the notice directed by the ARB’s remand order on October 26, 2020.

d. Respondent shall make payment to the Prosecuting Party, Mr. Naveen Vudhamari, in the amount of \$2,463.97 based on Respondent's failure to pay the required wage as calculated by the Administrator, Wage and Hour Division.

e. Respondent shall pay the Prosecuting Party, Mr. Naveen Vudhamari, pre-judgment and post-judgment interest on the back pay wages due at the applicable rate of interest as specified in 26 U.S.C. § 6621. The Administrator, Wage and Hour Division, shall make such calculations with respect to back pay and interest necessary to carry out this Decision and Order, as set forth in the concurrently-issued ruling on Administrator's request for clarification.

f. All claims asserted by the Prosecuting Party in this matter are denied and dismissed with prejudice.

g. A separate order will be issued addressing Administrator's request for clarification regarding the proper method and the beginning date for the interest calculation on back pay required by the Wage and Hour Division by the May 17, 2019 Decision and Order Granting Summary Judgement and this Decision and Order on Remand, by ratification, reaffirmation, and adoption.

SO ORDERED this day at Covington, Louisiana.

TRACY A. DALY
ADMINISTRATIVE LAW JUDGE

NOTICE OF APPEAL RIGHTS: Any interested party desiring review of this Decision and Order may file a petition for review with the Administrative Review Board (Board) pursuant to 20 C.F.R. § 655.845. Such petition shall be received by the Board within 30 calendar days of the date of the decision and order. The petition shall be served on all parties and on the administrative law judge.

If no petition for review is filed, this Decision and Order becomes the final order of the Secretary of Labor. *See* 20 C.F.R. § 655.840(a). If a petition for review is timely filed, this Decision and Order shall be inoperative unless and until the Board issues an order affirming it, or, unless and until 30 calendar days have passed after the Board's receipt of the petition and the Board has not issued notice to the parties that it will review this Decision and Order.

IMPORTANT NOTICE ABOUT FILING APPEALS:

The Notice of Appeal Rights has changed because the Board has implemented a new eFile/eServe system ("EFS") which is available at <https://efile.dol.gov/>. If you use the Board's prior website link, dol.appeals.entellitrak.com ("EFSR"), you will be directed to the new system.

Information regarding registration for access to the new EFS, as well as user guides, video tutorials, and answers to FAQs are found at <https://efile.dol.gov/support/>.

Filing Your Appeal Online

Registration with EFS is a two-step process. First, all users, including those who are registered users of the current EFSR system, will need to create an account at login.gov (if they do not have one already). Second, users who have not previously registered with the EFSR system will then have to create a profile with EFS using their login.gov username and password. Existing EFSR system users will not have to create a new EFS profile. All users can learn how to file an appeal to the Board using EFS by consulting the written guide at <https://efile.dol.gov/system/files/2020-11/file-new-appeal-arb.pdf> and the video tutorial at <https://efile.dol.gov/support/boards/new-appeal-arb>.

Establishing an EFS account under the new system should take less than an hour, but you will need additional time to review the user guides and training materials. If you experience difficulty establishing your account, you can find contact information for login.gov and EFS at <https://efile.dol.gov/contact>.

If you file your appeal online, no paper copies need be filed. **You are still responsible for serving the notice of appeal on the other parties to the case.**

Filing Your Appeal by Mail

You may, in the alternative, including the period when EFSR and EFS are not available, file your appeal using regular mail to this address:

U.S. Department of Labor
Administrative Review Board
ATTN: Office of the Clerk of the Appellate Boards (OCAB)
200 Constitution Ave. NW
Washington, DC 20210-0001

Access to EFS for Non-Appealing Parties

If you are a party other than the party that is appealing, you may request access to the appeal by obtaining a login.gov account and creating an EFS profile. Written directions and a video tutorial on how to request access to an appeal are located at: <https://efile.dol.gov/support/boards/request-access-an-appeal>

After An Appeal Is Filed

After an appeal is filed, all inquiries and correspondence should be directed to the Board.

Service by the Board

Registered users of EFS will be e-served with Board-issued documents via EFS; they will not be served by regular mail. If you file your appeal by regular mail, you will be served with Board-issued documents by regular mail; however, you may opt into e-service by establishing an EFS account, even if you initially filed your appeal by regular mail. At this time, EFS will not electronically serve other parties. You are still responsible for serving the notice of appeal on the other parties to the case.

SERVICE SHEET

Case Name: VUDHAMARI_NAVEEN_v_ADVENT_GLOBAL_SOLUTI_

Case Number: **2018LCA00022**

Document Title: **DECISION AND ORDER ON REMAND AND RULING ON MOTION FOR DISQUALIFICATION**

I hereby certify that a copy of the above-referenced document was sent to the following this 29th day of January, 2021:

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