U.S. Department of Labor Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

IN THE MATTER OF:

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,

PLAINTIFF,

v.

WMS SOLUTIONS, LLC,

DEFENDANT.

ARB CASE NO. 2020-0057

ALJ CASE NO. 2015-OFC-00009

DATE: March 8, 2023

Appearances:

For the Plaintiff:
Elena S. Goldstein, Esq; Beverly I. Dankowitz, Esq.; Jeffrey Lupardo, Esq.; Anna Laura Bennett, Esq.; Samuel Y. DePrimio, Esq.; *Office of the Solicitor, U.S. Department of Labor*; Washington, District of Columbia

For the Defendant:
Eric Hemmendinger, Esq.; *Shawe Rosenthal LLP*; Baltimore, Maryland

Before HARTHILL, Chief Administrative Appeals Judge, PUST and MILTENBERG, Administrative Appeals Judges

ORDER ON REMAND FROM THE SECRETARY OF LABOR

HARTHILL, Chief Administrative Appeals Judge:

This matter arises under the nondiscrimination requirements of Executive

Order (EO) 11246,[1] and its implementing regulations.[2] On November 18, 2021, the Administrative Review Board (ARB) issued a Decision and Order (ARB D. & O.) affirming a Department of Labor Administrative Law Judge's (ALJ) Recommended Decision and Order (Recommended D. & O.) issued on May 12, 2020, and the ALJ's Supplemental Recommended Decision and Order (Supplemental Recommended D. & O.) issued on July 21, 2020.[3] On December 16, 2021, the Secretary of the Department of Labor (Secretary) exercised his discretionary authority to conduct further review pursuant to Section 6(b)(2) and 6(c)(1) of Secretary's Order No. 01-2020.[4] On December 23, 2022, the Secretary issued a Final Agency Decision and Order (Secretary's FAD), reversing the ARB's D. & O. in part and remanding identified portions to the ARB for further proceedings.[5] After a thorough review of the record, we issue this Order on Remand from the Secretary's Order (Order on Remand) in which we modify the back pay and interest awards and order job relief consistent with the Secretary's FAD.

BACKGROUND

Defendant WMS Solutions, LLC (WMS) is a Baltimore, Maryland-based construction contractor that provides demolition, lead, and asbestos mitigation staffing to construction sites throughout the greater Baltimore-Washington region.[6] WMS was hired by Asbestos Specialists, Incorporated (ASI), a

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1 30 Fed. Reg. 12319 (Sept. 28, 1965), as amended by EO 11375, 32 Fed. Reg. 14303 (Oct. 17, 1967) and EO 12086, 43 Fed. Reg. 46501 (Oct. 10, 1978) (other amendments omitted).

2 41 C.F.R. Part 60 (2022).

3 ARB D. & O. at 26-27.

4 85 Fed. Reg. 13186 (Mar. 6, 2020).

5 Secretary (Sec'y) FAD at 2.

6 *Id.* By letter dated January 10, 2023, the ARB received notification from WMS's counsel that WMS's owner (Mr. Woodings) had died on or about March 27, 2022, and that WMS "no longer exists." Letter from Eric Hemmendinger to ARB, Jan. 10, 2023. For the following reasons, we conclude that this development has no apparent legal effect on the ARB's entry of an Order on remand in this case: (1) WMS Solutions, LLC is the party of record in this matter, not Mr. Woodings; (2) Maryland law allows for the continuation of litigation against a limited liability company, even one in forfeiture status, *see 7222 Ambassador Rd., LLC v. Nat'l Ctr. on Insts. & Alts., Inc.*, 233 A.3d 124, 130 (Md. 2020); and (3) as amended in 2020, Maryland Code § 4A-902 provides that a limited liability company does not automatically terminate upon a member's, even a sole member's, death. WMS's

subcontractor on a General Services Administration (GSA) building modernization project, to provide staff for ASI on the GSA project.[7] EO 11246 applies to subcontractors on a GSA contract.[8]

After the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) received a complaint about conditions of employment at the GSA project site, the OFCCP conducted an investigation, and then a compliance review, of WMS.[9] The compliance review period covered the period from February 1, 2011, to January 31, 2012.[10] In June 2015, OFCCP filed an administrative complaint with the Department of Labor's Office of Administrative Law Judges alleging that WMS had engaged in systematic discrimination in violation of EO 11246.[11]

PROCEDURAL HISTORY

The case proceeded to hearing before an ALJ on July 26-28, 2016.[12] On May 12, 2020, the ALJ issued a Recommended D. & O. in which he found that WMS: (1) discriminated against white, Black, Asian, and American Indian/Alaskan Native laborers in favor of hiring Hispanic laborers; (2) discriminated in hours and compensation against female laborers based on their gender and against Black and white laborers based on their race/national origin; and (3) failed to ensure and maintain a working environment free of harassment, intimidation, and coercion at construction sites where WMS employees worked as GSA subcontractors.[13] Although OFCCP requested the ALJ to make findings about whether WMS's methods of assigning laborers to projects and setting rates of pay

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counsel remains of record in this case, and so this Order on Remand is appropriately served on counsel for WMS as required by applicable law and rule.

7 Sec'y FAD at 2.

8 EO 11246 applies to contractors holding a federal government contract or subcontract of more than $10,000, or federal government contracts or subcontracts that have, or can reasonably expect to have, an aggregate total value exceeding $10,000 in a 12-month period. *See* 41 C.F.R. § 60-1.5(a)(1).

9 Sec'y FAD at 2.

10 *Id*.

11 *Id*.

12 Recommended D. & O. at 3.

13 Sec'y FAD at 2-3; *see also* Recommended D. & O. at 67, 74, 81.

had changed from the end of the review period to the time of hearing, the ALJ failed to do so.[14] The record below contained unrebutted evidence that WMS's compensation practices had not changed.[15]

The ALJ ordered WMS to pay $780,998 in back pay and interest to the non-hired workers who were injured by its discriminatory hiring practices, and $179,907 in back pay and interest to the female and non-Hispanic workers who were injured by its discriminatory job assignment and compensation practices.[16] The ordered back pay covered only the review period (February 1, 2011 to January 31, 2012), while interest extended only to the date of hearing (July 2016).[17] The ALJ did not award any equitable relief related to offers of employment.[18]

On May 26, 2020, OFCCP filed a Motion for Clarification requesting that the ALJ: (1) adjust the interest awarded for both groups of back pay beneficiaries to include the time elapsed from the date of hearing to the date of the ALJ's recommended decision; (2) adjust the compensation discrimination back pay award to include the time elapsed from the review period to the date of hearing; and (3) require WMS to extend job offers to up to 160 individuals denied jobs due to WMS's discriminatory practices, as jobs became available.[19] On July 21, 2020, the ALJ issued a Supplemental Recommended D. & O. denying these specified requests for clarification.[20]

Both parties filed exceptions to the ALJ's recommended decision with the ARB on September 18, 2020.[21] The OFCCP filed exceptions regarding both the Recommended D. & O. and the Supplemental Recommended D. & O. The OFCCP

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14 OFCCP's Findings of Fact and Conclusions of Law at 17.

15 Paulo Fernandes Testimony (Fernandes Test.), Hearing Transcript (Tr.) 532-33; OFCCP Hearing Exhibit (GX) 23, Harold Ortega Deposition (Ortega Dep.) 34-35; GX 25, Hugo Rivera Deposition (Rivera Dep.) 71-72.

16 Recommended D. & O. at 86.

17 *Id.* at 84-87.

18 *Id.* at 83-90.

19 OFCCP Motion for Clarification at 2-4.

20 ALJ's Supplemental Recommended D. & O. at 4.

21 In cases arising under EO 11246, the ARB reviews the parties' exceptions to the ALJ's recommended decision and issues the final administrative order. 41 C.F.R. §§ 60-30.27-30.30.

argued that the ALJ erred by failing to find that WMS's discriminatory methods of assigning laborers and setting pay rates remained the same following the review period and until the date of hearing.[22] The OFCCP asserted that the ALJ should have extended the compensation back pay calculations to the date of the hearing, and should have awarded interest to the date of the ALJ's recommended decision on both the hiring and compensation back pay awards.[23] The OFCCP calculated the additional compensation back pay through the date of hearing (through July 2016) and the interest for both groups of back pay beneficiaries through the date of the ALJ's May 12, 2020 Recommended D. & O., resulting in the total amount owed by WMS of $1,805,059.94, rather than $960,905 as awarded by the ALJ.[24] In addition, OFCCP noted as error the ALJ's failure to order offers of employment for those affected by WMS's discriminatory hiring violations.[25]

On November 18, 2021, the ARB issued its D. & O. affirming the ALJ's recommendations in all respects. On December 16, 2021, the Secretary exercised his lawful authority to undertake review of the ARB's D. & O. pursuant to sections 6(b)(2) and 6(c)(1) of Secretary's Order 01-2020. On December 23, 2022, the Secretary issued the Secretary's FAD. The Secretary found that the ARB had appropriately affirmed the ALJ's determination that WMS violated EO 11246 when it discriminated against non-Hispanic applicants in hiring and discriminated against women and non-Hispanic employees in assigning hours and setting pay. The Secretary found, however, that the ARB improperly deferred to the ALJ's recommended decisions related to damages. Specifically, the Secretary determined that the ARB should have concluded that the ALJ erred in:

> (1) fail[ing] to provide sufficient reasoning for his decision not to order back pay at least through the date of trial for individuals affected by WMS's discriminatory compensation practices; (2) den[ying] interest on back pay through the date of the decision for those affected by either WMS's discriminatory compensation or hiring practices; and (3)

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[22] OFCCP Exceptions at 14-15. *See also* OFCCP Exceptions Ex. A, Craig A. Leen Declaration (Leen Decl.) ¶ 7. Craig E. Leen was the OFCCP Director during the relevant time period.

[23] OFCCP Exceptions at 16-19.

[24] Leen Decl. ¶ 11 ("In total, I verify that $1,549,080 is the correct amount of back pay that WMS owes; $255,979.94 is the correct amount of interest that WMS owes on that back pay; and 160 is the correct number of remedial hires.").

[25] *Id.* (verifying that "160 is the correct number of remedial hires.").

> den[ying] job relief for individuals affected by WMS's discriminatory hiring practices.[26]

Given these determinations, the Secretary remanded this matter to the ARB for "further consideration of back pay, prejudgment interest, and job relief in accordance with this opinion."[27]

LEGAL STANDARDS

In cases arising under EO 11246, the ARB reviews the parties' exceptions to the ALJ's recommended decision and issues the final administrative order.[28] As noted above, the Secretary reserves discretionary authority to review ARB decisions.[29] On remand from Secretarial review, the Secretary's decision is binding on the ARB pursuant to Secretary's Order No. 01-2020.[30]

In a case brought under EO 11246, the applicable legal standards are those developed under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, as amended.[31] In Title VII cases, crafted relief should align with the central purpose of the Act: making persons whole for injuries suffered due to discrimination.[32] "Make-whole" relief is relief that aims to place "the injured party in the position he or she would have been in absent the discriminatory actions."[33]

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26 Sec'y FAD at 6.

27 *Id.* at 13.

28 41 C.F.R. §§ 60-30.27-30.30.

29 Secretary's Order 01-2020, 85 Fed. Reg. 13186 (Mar. 6, 2020).

30 *Id.* Section 6(c)(3) ("The Secretary's decision shall constitute final action by the Department and shall serve as binding precedent on all Department employees and in all Department proceedings involving the same issue or issues.").

31 Sec'y FAD at 4 (citing *OFCCP v. Greenwood Mills, Inc.*, ARB Nos. 2000-0044, 2001-0089, ALJ No. 1989-OFC-00039, slip op. at 7 (ALJ Feb. 24, 2000) ("Violations of Executive Order 11246 are analyzed using the same standards as Title VII of the Civil Rights Act of 1964.")).

32 Sec'y FAD at 5 (citations omitted).

33 *Id.* (citations omitted).

DISCUSSION

The Secretary determined that the ALJ properly concluded that WMS violated EO 11246 when it discriminated against non-Hispanic applicants in hiring and discriminated against women and non-Hispanic employees in assigning hours and setting pay.[34] The Secretary concurred with the sections of the ARB's D. & O. affirming the Recommended D. & O. on the question of WMS's liability—specifically, sections 1, 2, and 3 of the D. & O.—and declined to review them further.[35] Thus, on remand, the ARB does not address those sections further.

As stated above, however, the Secretary found that the ALJ ignored established precedent for what constitutes adequate make-whole relief and, specifically: (1) failed to provide sufficient reasoning for his decision not to order back pay at least through the date of hearing for individuals affected by WMS's discriminatory compensation practices; (2) denied interest on back pay through the date of the decision for those affected by either WMS's discriminatory compensation or hiring practices; and (3) denied job relief for individuals affected by WMS's discriminatory hiring practices.[36] The Secretary found that the ARB failed to properly review the ALJ's decision on these specific issues.

Having thoroughly reviewed the record in light of the Secretary's directive, we conclude that all relevant factual issues were adequately addressed by the parties which obviates the need for additional factfinding or a remand for any reason.[37] Based on the established record considered in light of the applicable law,

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[34] *Id.* at 6.

[35] *Id.*

[36] *Id.*

[37] The Supreme Court has frequently emphasized that "it is needless to remand [a] case" where "[t]he facts pertinent to that issue are not seriously disputed." *Cardillo v. Liberty Mut. Ins. Co.*, 330 U.S. 469, 473-74 (1947). *See City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 n.6 (1983) (because "[n]o factual issues are in dispute . . . there would be little point in remanding the case"). Not surprisingly, the federal Circuit Courts of Appeal agree, as do Department of Labor administrative appellate courts, including the ARB's predecessor, the Wage Appeals Board. *See In re Trib. Co. Fraudulent Conv. Litig.*, 946 F.3d 66, 75 n.5 (2d Cir. 2019) ("a remand is unnecessary" when there "are no factual disputes"); *First Amend. Coal. v. U.S. Dep't of Just.*, 878 F.3d 1119, 1129 (9th Cir. 2017) ("no need to remand to determine eligibility since the undisputed material facts meet those criteria."); *Oriental Fin. Grp., Inc. v. Cooperativa de Ahorro y Crédito Oriental*, 832 F.3d 15, 24 (1st Cir. 2016) ("where . . . 'the underlying facts are largely undisputed,' a remand would be 'a waste of judicial resources'") (quoting *Boston Duck Tours, LP v. Super Duck Tours,*

we order the following relief: (1) back pay for laborers subjected to WMS's discriminatory compensation and hiring practices in the total amount of $1,549,080; (2) interest on back pay in the total amount of $255,979.94 for individuals affected by WMS's discriminatory compensation and hiring practices; and (3) job relief tailored to the class of workers that WMS discriminated against with its hiring practices, all as outlined in more detail below.[38]

1. Back Pay for Compensation Discrimination in the Instant Case Extends to the Hearing Date and There is No Compelling Reason to Curtail the Damages Period

Based on the testimony of OFCCP's expert witness, the ALJ awarded back pay for workers injured by WMS's discriminatory compensation practices only for the review period.[39] Because the ALJ erred in limiting the period of back pay to the review period, and for the reasons set forth below, the ARB hereby extends the amount of back pay owed to also include from the end of the review period (February 2012) to the date of the hearing before the ALJ (through July 2016).[40]

Back pay is an important component of make-whole relief and directly serves the law's purpose of returning a wronged individual to the position she would have been in if the discrimination had never occurred.[41] In the Title VII context, the period of recovery of back pay begins at the time the discrimination causes economic

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LLC, 531 F.3d 1, 15 (1st Cir. 2008)); *In the Matter of Arbor Hill Rehab. Project, Albany, New York,* No. 1987-04, at 17 (WAB Nov. 3, 1987) ("Only disputes over facts that might affect the outcome of the case under the applicable law should be remanded for evidentiary hearing."). *See also Schwebel v. Crandall*, 967 F.3d 96, 106 (2d Cir. 2020); *United States v. Griffith*, 928 F.3d 855, 875 (10th Cir. 2019); *Villarosa v. N. Coventry Twp.*, 711 F. App'x 92, 96 n.3 (3d Cir. 2017); *SUFI Network Servs., Inc. v. United States*, 755 F.3d 1305, 1312 (Fed. Cir. 2014); *J.O. v. R & R Mining LLC*, BRB No. 07-0487 BLA, 2008 WL 2897359, at *3 (Ben. Rev. Bd. Feb. 28, 2008).

[38] Leen Decl. ¶ 11 ("In total, I verify that $1,549,080 is the correct amount of back pay that WMS owes; $255,979.94 is the correct amount of interest that WMS owes on that back pay; and 160 is the correct number of remedial hires.").

[39] The ALJ awarded $179,907 in compensation discrimination backpay and interest for the review period. The backpay amounted to $154,093 and the interest included $25,814. Leen Decl. ¶ 5.

[40] Before the ALJ and ARB, OFCCP has requested and calculated compensation discrimination back pay through the date of the ALJ's hearing. *See* OFCCP Exceptions at 14-19. *See also* Leen Decl. ¶ 7.

[41] Sec'y FAD at 5, 9-10.

harm and presumptively extends until the date of final judgment.[42] Appellate courts have found error when lower courts end back pay before final judgment, especially if the adjudicator fails to identify reasons for doing so.[43] The premature severing of back pay prior to the date of final judgment must be based on "compelling" reasons in order to withstand scrutiny.[44]

Before both the ALJ and the ARB, the OFCCP argued that compensation back pay should extend through the date of the ALJ hearing because, as the record reflects, WMS did not change its discriminatory practices regarding rates of pay or job assignments from the beginning of the review period through to the July 2016 hearing.

The evidence in the record shows that WMS did not alter its methods for setting rates of pay and work assignment practices after the review. WMS's owner testified during his deposition that after the review, "I know that they've put a lot of rigor into trying to -- to understand more the nuances of documentation -- to validate all the things they do naturally."[45] When asked about wage rates, he testified that they were set "by market."[46] WMS's Chief Operating Officer and project managers testified similarly.[47]

WMS did not argue that the record showed it had changed its discriminatory assignment and rates practices. Instead, it raised two arguments in an attempt to establish that the ALJ was correct in limiting back pay to the review period. First, WMS argued that WMS was not put on notice that the claims could extend beyond the review period given that the compliance review and conciliation process were

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42 Sec'y FAD at 7.

43 *See, e.g.*, *Sellers v. Delgado Coll.*, 781 F.2d 503, 505 (5th Cir. 1986) ("Back pay . . . may extend to the date of judgment . . . . [T]he magistrate failed to explain why the back pay period ended [prior to that date] . . . . ").

44 Sec'y FAD at 8.

45 GX 21, Edward Woodings Deposition (Woodings Dep.) 20.

46 *Id.* 24.

47 When asked at the hearing if pay setting had changed, WMS's Chief Operating Officer, Paulo Fernandes, stated, "No, I think it's still market driven." Fernandes Test., Tr. 533. WMS's project managers testified similarly about work assignment practices. Hugo Rivera, when asked in his deposition how his assignment practices had changed, testified that he assigns workers "the same way." GX 25, Rivera Dep. 71-72. Harold Ortega testified likewise. GX 23, Ortega Dep. 34-35.

limited to the review period, and WMS was not afforded procedural protections provided by EO 11246 and 41 C.F.R. Part 60-1.[48] Second, WMS insisted that the record is devoid of statistical evidence to establish any amount of back pay owed for the timeframe after the review period and until the hearing, and so no award could be issued.

WMS's first argument suffers from several deficiencies. WMS generally cites to EO 11246 and 41 C.F.R. Part 60-1 but does not explain, in any manner, how these authorities limit back pay to the review period.[49] On their face, they do not. WMS also broadly cites to Judge Brown's concurrence in *OFCCP v. Bank of America*.[50] Judge Brown's concurrence is a slim reed. Not only is the concurrence not a precedential holding, but it addresses the period of liability, not the amount and duration of damages.[51] The concurrence raises concerns about the agency's having expanded the scope of an administrative complaint to include violations involving job category types not originally included in the compliance review but instead revealed during the litigation discovery process.[52] Nothing of this sort occurred in the present case. Instead, WMS acknowledged on the record at hearing that it had not ceased any of the discriminatory practices that had been revealed during the compliance review. The fact that WMS may have been unaware that the "period for which liability is found does not necessarily determine the period for which relief can be granted,"[53] does not present any compelling legal basis to avoid application of the presumptive extent of a back pay award. To the contrary, "[t]he general rule that ignorance of the law or a mistake of law is no defense . . . is deeply rooted in the American legal system."[54]

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48 WMS Opposition to OFCCP's Exceptions at 4.

49 *Id.*

50 *OFCCP v. Bank of Am.*, ARB 2013-0099, ALJ No. 1997-OFC-00016, slip op. at 32 (ARB Apr. 21, 2016) (Brown, J. concurring).

51 *Id.* at 32-34.

52 *Id.*

53 *McKenzie v. Kennickell*, 645 F.Supp. 427, 430 (D.D.C. 1986) (citations omitted).

54 *Commil USA, LLC v. Cisco Sys., Inc.*, 575 U.S. 632, 646 (2015) (citation and quotations omitted). *See, e.g., Barlow v. United States*, 32 U.S. 404, 411 (1833); *Reynolds v. United States*, 98 U.S. 145, 167 (1879); *Shevlin-Carpenter Co. v. Minnesota*, 218 U.S. 57, 68 (1910).

As its second basis for seeking to avoid the extension of back pay as requested by the OFCCP, WMS argued that the record contained "no statistical evidence outside the review period" upon which such an award could be based.[55] Again, WMS is incorrect. The record contains all the factual evidence necessary to support this award, primarily in the testimony of OFCCP's damages expert, who calculated the owed back wages from the beginning of the review period to July 2016, relying on mathematically sound extrapolations from the review period data and the same calculation methods ultimately adopted by the ALJ in his recommended findings.[56] This back pay calculation method has been explicitly approved and utilized by the OFCCP in the past.[57]

Upon remand and further review, it is clear that the record sufficiently supports an award of back pay to remedy WMS's discriminatory compensation practices through the date of the hearing. WMS's discriminatory compensation practices were unchanged through the date of the hearing, and neither WMS nor the ALJ in his recommended award established any compelling reason for curtailing back pay to the review period. Therefore, the ARB orders back pay through the date of hearing for laborers subjected to WMS's compensation and hiring discrimination in the amount of $1,549,080, the amount attested to by OFCCP as directed by the ALJ following issuance of his Recommended D. & O.[58]

2. Prejudgment Interest Through the Date of Decision

In the same way that the prevailing legal presumption is clear that an award of back pay under EO 11246 extends to the date of hearing, the law is also clear that an award of interest extends to the date of final judgment.[59]

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55 WMS Opposition to OFCCP's Exceptions at 4.

56 *See* OFCCP Exceptions at 18.

57 Sec'y FAD at 10 n. 8.

58 Leen Decl. ¶ 11 ("In total, I verify that $1,549,080 is the correct amount of back pay that WMS owes."). The total back pay includes: $154,093 in back pay for compensation discrimination from February 1, 2011, through January 31, 2012 (the review period), $668,948 in back pay for hiring discrimination from February 1, 2011, through January 31, 2012 (the review period), and $726,039 in back pay for compensation discrimination from February 2012 through July 2016. Leen Decl. ¶¶ 5-7.

59 Sec'y FAD at 10-11.

Although the OFCCP requested interest to the date of the ALJ's decision in its Motion for Clarification, the ALJ denied the request in his Supplemental Recommended D. & O. Nevertheless, we have thoroughly reviewed the record and discern no basis to deviate from the general rule that interest extends to the date of judgment.[60]

The ARB therefore finds that the ALJ should have awarded interest through the date of the decision for those affected by WMS's discriminatory compensation or hiring practices. In this specific case, OFCCP has requested an award to the date of the ALJ's Recommended D. & O. in the record below, and in its exceptions filed with the ARB, and that is the date for which OFCCP verified its calculations. Accordingly, interest is awarded as requested and verified by OFCCP in the total amount of $255,979.94.

3. Equity Requires Job Relief

While back pay plus accumulated interest are the standard starting point for a damages award in an EO 11246 case, courts have an obligation to also award "any equitable remedies necessary" to make persons whole for injuries suffered on account of unlawful employment discrimination.[61] Instatement, also known as "job relief," is widely recognized as a preferred remedy in cases involving an employer's discriminatory failure to hire.[62]

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[60] In the Supplemental Recommended D. & O., the ALJ focused not on the substance of the legal issue but on whether Federal Rule of Civil Procedure 60(a) was sufficiently broad to include this issue as a "clerical mistake or a mistake arising from oversight or omission" and thereby covered by the Rule. Finding that it was not a clerical mistake, the ALJ declared it "a request to the Court to reconsider the amount of a damage award that the Court has already considered and decided . . . . [by] requesting the Court to amend the amount of the interest on back pay to include an additional three years and ten months of interest," and so denied the request. Supplemental Recommended D. & O. at 4.

[61] Sec'y FAD at 11 (citations omitted).

[62] *Id.* at 11-12 (citations omitted). *See also* 29 C.F.R. § 1614.501(a) ("When an agency, or the Commission, in an individual case of discrimination, finds that an applicant or an employee has been discriminated against, the agency shall provide full relief which shall include the following elements in appropriate circumstances: . . . (3) An unconditional offer to each identified victim of discrimination of placement in the position the person would have occupied but for the discrimination suffered by that person, or a substantially equivalent position.").

The OFCCP requested an award of job relief in its initial Administrative Complaint, and in its post-hearing briefing.[63] The ALJ determined that WMS had engaged in discriminatory hiring practices, for the reasons and upon the evidence well stated in the ALJ's recommended orders. Accordingly, based upon the determined findings that WMS discriminated against job applicants in its hiring processes, we now order WMS to extend job offers to individuals in the One-Stop Shop proxy group identified by the ALJ,[64] consisting of non-Hispanic laborers seeking construction work and registered at "One-Stop Shop" unemployment centers in the Washington, D.C. area during the review period, as jobs become available, until such time as WMS either hires 160 laborers from the One-Stop Shop group or the proxy list is exhausted, whichever comes first.

CONCLUSION

Based upon the factual record and upon the legal authorities cited above, the ARB adopts the determinations made by the Secretary related to the proper amount of back pay, interest and job relief that should be awarded to the members of the affected class of workers discriminated against by WMS.

ORDER

1. WMS is **ORDERED** to pay back pay in the amount of $1,549,080 in accordance with the Leen Declaration.[65]

2. WMS is **ORDERED** to pay a total of $255,979.94 in interest on the back pay in accordance with the Leen Declaration.[66]

3. WMS is **ORDERED** to extend job offers to individuals in the aforementioned One-Stop Shop proxy group, consisting of non-Hispanic laborers seeking construction work and registered at "One-Stop Shop" unemployment centers in the Washington, D.C. area during the review period, as jobs become available, until such time as WMS either hires 160 laborers from the One-Stop Shop group or the proxy list is exhausted, whichever comes first.

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[63] Administrative Complaint at 7, Prayer for Relief ¶ 2; *see also* OFCCP's Findings of Fact and Conclusions of Law at 54.

[64] Recommended D. & O. at 84-86.

[65] *Supra* note 58.

[66] *Supra* note 38.

4. WMS is **ORDERED** to comply in accordance with Executive Order 11246 and the regulations issued pursuant thereto.

SO ORDERED.

[redacted]

SUSAN HARTHILL
Chief Administrative Appeals Judge

[redacted]

TAMMY L. PUST
Administrative Appeals Judge

[redacted]

NED MILTENBERG
Administrative Appeals Judge