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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. 1324b Proceeding
) CASE NO. 90200363
MCDONNELL DOUGLAS)
CORPORATION,)
Respondent.)
_____)

ERRATA

The date of issuance of the Order To Show Cause Why Respondent's Motion for Summary Decision Should Not Be Granted regarding Mr. Crow shall now read "March 8, 1994".

IT IS SO ORDERED this 22nd day of March, 1994, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

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ORDER TO SHOW CAUSE WHY RESPONDENT'S MOTION FOR
SUMMARY DECISION SHOULD NOT BE GRANTED

The procedural history in this case is long and protracted and, mostly, irrelevant to this Order. What is relevant is that a Complaint was filed by the Office of Special Counsel (OSC) which alleged that Respondent engaged in a pattern and practice of citizenship based discrimination in that it hired temporary British workers under the H-2B visa program while discouraging and rejecting U.S. workers, despite their qualifications. Its Complaint was based on the charges of twenty¹ charging parties.

On April 5, 1993, I granted OSC's motion to withdraw based on the fact that both OSC and sixteen of the charging parties had agreed to settle with Respondent. Of the remaining charging parties, I found one had abandoned his claim, leaving five who wished to be heard.

I have before me Respondent's Motion for Summary Decision regarding Gerald Num Crow's charge of citizenship-based employment discrimination in violation of 8 U.S.C. 1324b. Respondent's position is that there are no material facts in dispute and, thus, it is entitled to a judgment as a matter of law. Respondent has presented the following

¹ I subsequently granted a motion to amend the Complaint so that two additional charging parties could be named.

arguments: that Mr. Crow's charge, allegedly filed with the OSC on August 10, 1990, was untimely and that Mr. Crow has not stated a cause of action; i.e., he has not articulated any damages that he has suffered as a result of the alleged citizenship discrimination since his argument that he was discriminated against in his overtime hours is not covered by IRCA. IRCA only addresses issues of discriminatory hiring, firing and retaliation as defined under 8 U.S.C. 1324b(a) and does not cover terms and conditions of employment.

In support of its motion, Respondent filed the following documents:

1. a copy of a signed charge form from Mr. Crow, date stamped by OSC on August 13, 1990;
2. a copy of OSC's questionnaire to Mr. Crow, date stamped on August 16, 1990;
3. a preprinted, check-off affidavit from Mr. Crow, date stamped by OSC on August 13, 1990 in which Mr. Crow states that he had applied for a position as a Jig and Fixture Builder with Respondent within the last three years, that he had been offered a direct hire position by Respondent, that he had been told that there was a hiring freeze, that for two years he had been denied or unable to work days or hours when British temporary workers were allowed to work and that American workers were being laid off after being displaced by temporary foreign workers; and,
4. Portions of Mr. Crow's October 7, 1991 deposition.

Subsequent to this filing, Respondent filed Mr. Crow's complete deposition of that date.

Although Mr. Crow has not filed a response to Respondent's Motion for Summary Judgment, OSC had previously submitted argument supporting the timeliness of the charging parties' charges. As such, I will consider those arguments as Mr. Crow's when considering this motion.

II. *Discussion And Order*

Under the regulations, specifically 28 C.F.R. 68.38(c), I may enter a summary decision if the pleadings, affidavits, material obtained by discovery or otherwise, 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.

However, I do not have the benefit of Mr. Crow's position regarding Respondent's argument that he has no cause of action as he had no damages. Further, I have no information as to how he intends to prove his allegation of citizenship discrimination. The bold allegation that Respondent hired temporary foreign workers instead of U.S. workers is insufficient. Mr. Crow must not only prove that fact, but that Respondent's discriminatory act(s) affected him adversely.

As I am prepared to rule on this motion, but wish to allow Mr. Crow every chance to prove his case, I am issuing this Order. As it is Mr. Crow's burden to prove by a preponderance of the evidence that he suffered citizenship discrimination at the Respondent's hands, I direct him to file with this Court, within 15 days of receipt of this Order, a statement of his damages, i.e., identify his losses and/or injuries; a statement of the alleged discriminatory acts directed at him by Respondent including his allusion to retaliation by Respondent for filing his charge, as stated in his deposition; his theory of the case; his plan of proof of the alleged citizenship discrimination; a list of his prospective witnesses and their proposed testimony and relevance; and a list of any other evidence that he will bring forth to prove his case.

Mr. Crow is cautioned that, should he not file this information, I will infer that he had decided to abandon his claim and I will rule on Respondent's motion without benefit of his input.

IT IS SO ORDERED this 8 day of March, 1993, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge