



In the Matter of:

NAVEEN VUDHAMARI,

ARB CASE NO. 2019-0061

PROSECUTING PARTY,

ALJ CASE NO. 2018-LCA-00022

v.

DATE: July 30, 2020

ADVENT GLOBAL SOLUTIONS,

RESPONDENT.

Appearances:

For the Prosecuting Party:

Naveen Vudhamari; *pro se*; Himayathanagar, India

For the Respondent:

Kavitha Akula, Esq.; *Akula & Associates, P.C.*; Dallas, Texas

**Before: Thomas H. Burrell, *Acting Chief Administrative Appeals Judge*;
James A. Haynes and Heather C. Leslie, *Administrative Appeals Judges***

ORDER OF REMAND

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 May 17, 2019, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order Granting Summary Decision (D. & O.), denying in part and granting in part a motion submitted by Respondent Advent Global Systems to dismiss a complaint filed by Prosecuting Party Naveen Vudhamari. For the following reasons, we reverse the ALJ's rulings and remand the case for further proceedings consistent with our decision.

BACKGROUND

Advent is a company that provides information technology services. In August 2015 it filed a Labor Condition Application (LCA) seeking to hire an H-1B nonimmigrant worker to work as a systems analyst between August 5, 2015 and August 5, 2018. On or about August 10, 2015, Vudhamari began working for Advent in the Systems Analyst position identified in the LCA. After he began working at Advent, Vudhamari submitted a WH-4 (Nonimmigrant Worker Information Form) to the Department of Labor's Wage and Hour Division. In this document he alleged that Advent committed several violations, including failing to pay him the legal wage pursuant to his H-1B status. Petition for Review, Exhibit (PX) 15 at 6.

Wage and Hour conducted an investigation and on June 19, 2018, the Administrator concluded that Advent committed LCA violations related to Vudhamari's employment and ordered the company to pay Vudhamari \$2,463.97 in back wages. On June 27, 2018, Vudhamari appealed the Administrator's determinations and requested a hearing before the Office of Administrative Law Judges (OALJ). On December 18, 2018, the ALJ ordered Vudhamari to "file a Formal Complaint asserting the specific grounds upon which his claim is based, the specific violations he alleges that Respondent committed, and the specific nature of the relief he seeks in this matter." On January 3, 2019, Vudhamari submitted a Formal Complaint (Complaint) to the ALJ alleging various violations committed by Advent, the Department of Labor, and the U.S. Citizenship and Immigration Services.

On March 15, 2019, Advent filed a Motion to Dismiss (Motion) the Complaint on the grounds that Vudhamari failed to state a claim upon which relief could be granted. The ALJ ordered Vudhamari to respond to the Motion and informed him that failure to respond would result in a grant of the Motion. On April 5, 2019, Vudhamari filed a reply to the Motion with supporting exhibits and attachments. D. & O. at 4.

The ALJ reviewed the Motion and concluded that Advent intended to file a combined motion to dismiss and an alternative motion for summary decision pursuant to the rules governing proceedings before OALJ. *Id.* at 4-5. On May 17, 2019, the ALJ issued a Decision and Order Granting Summary Decision. The ALJ denied the portion of the Motion seeking to dismiss the Complaint for failure to

state a claim upon which relief could be granted and granted the portion of the Motion seeking summary decision. Vudhamari appealed the ALJ's ruling on the Motion to the Board.

JURISDICTION AND STANDARD OF REVIEW

The ARB has jurisdiction to review the ALJ's decision pursuant to 20 C.F.R. § 655.845. *See also* 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. 13,186 (Mar. 6, 2020). The ARB reviews de novo an ALJ's orders on motions to dismiss and for summary decision. *Johnson v. The Wellpoint Cos., Inc.*, ARB No. 2011-0035, ALJ No. 2010-SOX-00028 (ARB Feb. 25, 2013).

In considering a motion to dismiss for failure to state a claim, we accept the non-movant's factual allegations as true and draw all reasonable inferences in his favor. *Tyndall v. U.S. EPA*, ARB No. 1996-0195, ALJ Nos. 1993-CAA-00006, 1995-CAA-00005, slip op. at 2 (ARB June 14, 1996). In contrast, summary decision is appropriate if the pleadings, affidavits, and other evidence show that there is no genuine issue as to any material fact, and that the moving party is entitled to prevail as a matter of law. 29 C.F.R. § 18.72(a); *Franchini v. Argonne Nat'l Lab.*, ARB No. 2013-0081, ALJ No. 2009-ERA-00014, slip op. at 10 (ARB Sept. 28, 2015). In reviewing such a motion, the evidence before the ALJ is viewed in the light most favorable to the non-moving party, and he may not weigh the evidence or determine the truth of the matter.

DISCUSSION

We agree with the ALJ's conclusion that Vudhamari stated a claim upon which relief could be granted by alleging that Advent underpaid his wages. D. & O. at 5 ("Pursuant to the applicable regulations, an employer is obligated to pay its H-1B employees the required wage rate for the entire period of authorized employment. 20 C.F.R. § 655.731(a) ... Consequently, because the Prosecuting Party has alleged Respondent did not pay him wages or underpaid his wages, the Prosecuting Party has stated a claim upon which relief could be granted."). And Advent asserts in its Motion that it "has been and is willing to pay the back wages owed to Mr. Vudhamari which was determined by the Department of Labor after a thorough investigation." Motion at 2.

But the Complaint incorporates claims beyond the back pay award, and Advent submitted exhibits in support of its assertion that it was entitled to dismissal of the Complaint. Vudhamari also submitted additional documents in support of his response to the Motion. Because the parties submitted evidence outside the pleadings, it was proper for the ALJ to interpret the Motion as a request for summary decision. *Hukman v. U.S. Airways, Inc.*, ARB No. 2015-0054, ALJ No. 2015-AIR-00003, slip op at 6-7 (ARB July 13, 2017).

The ALJ informed Vudhamari of the consequences for failing to reply to the Motion when it was presented as a motion to dismiss. *See* March 19, 2019 Order Establishing Deadline for Prosecuting Party to File Reply to Respondent's Motion to Dismiss. But the ALJ did not inform Vudhamari that he was converting the Motion to a motion for summary decision. Vudhamari is appearing pro se, and the ALJ should have provided him with notice of the requirements for opposing a motion for summary decision, in a form sufficiently understandable to apprise him of what was required, along with the text of the rule governing summary decisions. *See, e.g., Zavaleta v. Alaska Airlines, Inc.*, ARB No. 2015-0080, ALJ No. 2015-AIR-00016, slip op. at 11-12 (ARB May 8, 2017); *see also Timms v. Frank*, 953 F.2d 281, 285 (7th Cir 1992) (“a short and plain statement in ordinary English” is appropriate because “the need to answer a summary judgment motion with counter-affidavits is contrary to lay intuition.”).

Accordingly, we direct the ALJ to provide Vudhamari 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. Although we express no opinion on the merits of Vudhamari's claims, we **REVERSE** the ALJ's Decision and Order Granting Summary Decision and **REMAND** the case for further proceedings consistent with this opinion.

SO ORDERED.