

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 24 March 2015**

Case No: 2015-LCA-00010

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION,  
UNITED STATES DEPARTMENT OF LABOR,

Prosecuting Party,

v.

E-BUSINESS INTERNATIONAL, INC.,

Respondents.

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SIDDHARTHA MAITY,

Complainant/Prosecuting Party,

v.

E-BUSINESS INTERNATIONAL, INC.,

Respondents,

And

ADMINISTRATOR, WAGE AND HOUR DIVISION,  
UNITED STATES DEPARTMENT OF LABOR,

Party-in-Interest.

**ORDER GRANTING RESPONDENT'S MOTION TO DISMISS**

This case arises under the H-1B visa program of the Immigration and Nationality Act of 1952 (INA), 8 U.S.C.A. § 1101, et seq, as amended, and its implementing regulations found at 20 CFR Part 655, Subparts H and I. A formal hearing was set for April 8, 2015 at 9 a.m. in Minneapolis, Minnesota. On March 9, 2015, Complainant submitted a Motion to Continue stating he was leaving the United States on March 19, 2015, indefinitely, and would be unable to attend the

April 8, 2015, hearing. An Order continuing the hearing was issued March 13, 2015. In his Motion, Complainant did not provide notice of his Motion to the Respondent.

On March 10, 2015, Respondent filed its Motion to Dismiss. Complainant did not respond.

Respondent submitted three arguments for dismissal.

First, Respondent moved that Complainant has “failed to adhere to the Code of Federal Regulations” regarding appeal stating that Complainant’s appeal failed to provide notice to the Respondent and it was prejudiced. 20 C.F. R. section 655.820 (f).<sup>1</sup> Respondent cited to Wakileh v. Western Kentucky University, ALJ No. 2003 – LCA 0023 (October 2003). Wakileh was dismissed due to Complainant’s failure to appeal within the proper time period. The Decision listed Respondent’s proposed reasons for dismissal including untimely filing and failure to provide notice of the appeal to the Respondents. The court did not address the notice issue in its dismissal. The Complainant Maity timely filed his request for a hearing. Wakileh did not.

Second, Respondent moved that Complainant failed to appear for his scheduled deposition, that his request for an administrative hearing should be stricken and in the alternative, the Complainant should be compelled to attend his deposition. Respondent did not contact the Complainant first with proposed dates for his deposition. The Complainant lives in Minnesota while the Respondent’s business and attorney were in New Jersey and the Respondent made no effort to conduct the deposition in Minnesota, or via video or by telephone. The undersigned will not strike the request for hearing or compel the Complainant to attend an out of town deposition when there exists other means to handle the location differences.

Third, the Respondent stated that the Respondent has “paid \$10,085.55 in back wages to Maity as a result of the USDOL investigation into Maity’s claims.” The Respondent argued that Complainant accepted the payment while continuing to object to the Department of Labor findings. Respondent attached a copy of the check with its Motion. It also submitted a February 19, 2015, letter from the Solicitor, U. S. Department of Labor, stating that inasmuch as the Respondent “paid the full back wage amount assessed in the Administrator’s Determination Letter, and the payment was accepted by the Complainant, the Administrator will not be participating in this case....” Respondent argued that Complainant’s claim for additional compensation for the same claim was waived by his cashing the check and his request for hearing must be dismissed. Respondent cited to Heavenridge v. Ace-Text Corp., No. 92-75610, 1993 WL 603201 (E.D.Mich. Sept.3, 1993) where the Court held that where an employee cashes the employer's check, it effectuates the waiver. I agree.

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<sup>1</sup> (f) Copies of the request for a hearing shall be sent by the requestor to the Wage and Hour Division official who issued the Administrator's notice of determination, to the representative(s) of the Solicitor of Labor identified in the notice of determination, and to all known interested parties.

**ORDER**

It is hereby **ORDERED** that:

1. Respondent's Motion to Dismiss is **GRANTED**.
2. Complainant's claim is **DISMISSED**.

DANA ROSEN  
Administrative Law Judge

DR/ard  
Newport News, VA