



Issue Date: 04 March 2020

Case No.: 2017-TAE-00007

In the Matter of:

OETTING HARVESTING, INC.,
Respondent.

DECISION AND ORDER AFFIRMING
NOTICE OF DETERMINATION OF BACK WAGES AND
ASSESSING CIVIL MONEY PENALTIES

This matter arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1101, *et seq.*, and the implementing regulations at 29 C.F.R. Part 501. For the reasons explained below, I am issuing this Decision and Order Affirming Notice of Determination of Back Wages and Assessing Civil Money Penalties (“Decision and Order”) as a sanction for Respondent’s failure to participate in a properly noticed status conference call on February 5, 2020, and its failure to respond to an order to show cause why I should not enter a decision and order in this matter affirming the Administrator’s determinations in this matter without any further proceedings.

Procedural History

This case was assigned to me on April 21, 2017, and I issued a Notice of Assignment, Prehearing Order, and Notice of Assignment on July 21, 2017.

On September 15, 2017, I issued an Order Continuing Hearing because the parties entered into mediation with a Department of Labor mediator. Following an unsuccessful mediation attempt, I issued a Supplemental Notice of Hearing and Order on August 19, 2019, to re-set the hearing for Thursday, November 14, 2019, in Manhattan, Kansas.

On August 29, 2019, I received a letter from the Counsel for the Administrator advising that he would be unavailable from November 8, 2019 through November 24, 2019. Accordingly, I issued an Order Cancelling Hearing and Supplemental Notice of Hearing on October 24, 2019. In the Order, I re-set the hearing for Thursday, February 20, 2020, in or near Manhattan, Kansas.

On January 23, 2020, I issued an Order Scheduling Conference Call (“Conference Call Order”). The Conference Call Order set a conference call for February 5, 2020, at 1:00 p.m. (EST) (the “Conference Call”) and provided call-in information. According to the service sheet attached to the Conference Call Order, it was sent on January 23, 2020, to Respondent at the following address: Oetting Harvesting, Inc., 305 N. Pennsylvania Avenue, Sylvan Grove, KS 67481-8825 by regular mail.

On February 5, 2020, I: (1) reviewed the case file and found no indication that the copy of the Conference Call Order sent to Respondent was returned by the U.S. Post Office as undeliverable; (2) reviewed the Office of Administrative Law Judges’ Case Tracking System and found no indication that any party had submitted a response to the Conference Call Order; and (3) confirmed with my law clerks that they received no calls from anyone on behalf of Respondent stating that Respondent would be unable to participate in the Conference Call.

On February 5, 2020, at 1:00 p.m. (EST), I held the Conference Call. Counsel for the Administrator participated in the Conference Call, which was recorded by a court reporter. Nobody participated in the Conference Call on behalf of Respondent. A court reporter prepared a transcript of the Conference Call.

During the Conference Call, I read portions of the Conference Call Order into the record and stated that, as Respondent did not appear for the Conference Call, I would issue an order cancelling the hearing then set for February 20, 2020, and would issue an order to show cause why a decision and order in favor of the Administrator should not be entered in this matter without further proceedings.

On February 6, 2020, I issued an Order Cancelling Hearing and Order to Show Cause Why Decision Should Not Be Entered Without Further Proceedings (“Order to Show Cause”). In the Order to Show Cause, I stated,

Respondent is ORDERED TO SHOW CAUSE, within 14 days of the date of this order, why a decision and order in favor of the Administrator should not be entered in this matter without further proceedings – at a minimum, Respondent must establish that it had good cause for its failure to appear for the Conference Call.

The parties are notified that in the absence of a timely response to the Order to Show Cause from Respondent establishing, at a minimum, that it had good cause to fail to appear for the Conference Call, I will enter a decision and order in this matter in favor of the Administrator without any further proceedings.

Order to Show Cause at 2.

According to the Service Sheet attached to the Order to Show Cause, a copy of the Order to Show Cause was mailed to Respondent on February 6, 2020, at the following address:

Oetting Harvesting, Inc.
305 N. Pennsylvania Ave.
SYLVAN GROVE KS 67481-8825[.]

Order to Show Cause at Service Sheet. As of March 4, 2020, I have received no response to the Order to Show Cause from Respondent. I have reviewed the Office of Administrative Law Judge's Case Tracking System and the case file and have found no indication in the case file that the Order to Show Cause was returned by the Post Office as undeliverable. I also have confirmed with my law clerks that they received no calls from anyone on behalf of Respondent concerning the Order to Show Cause.

Discussion

Based on the foregoing, I find: (1) the Conference Call was properly noticed; (2) Respondent did not participate in the Conference Call; (3) Respondent was advised that the consequences of failing to participate in the Conference Call could include the entry of a decision and order in favor of the Administrator without further proceedings; (4) Respondent was given an opportunity via the Order to Show Cause to show that it had good cause for its failure to participate in the Conference Call; (5) Respondent was advised that failure to submit a timely response to the Order to Show Cause establishing that it had good cause to participate in the Conference Call would result in my entering a decision and order in favor of the Administrator without further proceedings; and (6) Respondent did not submit a timely response to the Order to Show Cause.

Moreover, I find that on the record before me: (1) there is no evidence that Respondent had good cause to fail to appear for the Conference Call; and (2) there is no evidence that Respondent had good cause to fail to submit a timely response to the Order to Show Cause.

Given Respondent's failure to participate in the Conference Call and its failure to respond to the Order to Show Cause after it was advised of the consequences of such failure, I find it appropriate to enter a decision and order in favor of the Administrator without further proceedings.

Specifically:

1. I incorporate by reference into this Decision and Order the Administrator's Order of Reference dated April 10, 2017, and Exhibit A to the Order of Reference, the Administrator's Notice of Determination of Back Wages and Assessing Civil Money Penalties (while I have read and considered Exhibit B to the Order of Reference, which sets forth Respondent's responses to the listed violations, I expressly do not incorporate that document into this Decision and Order); and

2. I find that Respondent's responses to the listed violations and amount of back wages and civil money penalties due set forth in Exhibit B to the Order of Reference are insufficient to establish that the Administrator erred in determining which violations Respondent committed, the amount of back wages due, or the amount of civil money penalties due.

Order

Respondent is ordered to pay a total amount of **\$21,301.52** (\$901.52 of this amount reflects unpaid wages, and \$20,400.00 of this amount reflects civil money penalties) within 30 days of the date of this Decision and Order to the Wage and Hour Division, U.S. Department of Labor. Respondent is ordered to make this payment by certified check or money order and shall deliver or mail the payment to the following address:

U.S. Department of Labor
Wage and Hour Division
P.O. Box 2638
Chicago, Illinois 60690-2638.

Respondent is advised that the \$21,301.52 amount due referenced above constitutes a debt owed to the Federal government and is subject to the assessment of interest, administrative cost charges, and penalties in accordance with the Debt Collection Act of 1982, and departmental policies.

SO ORDERED.

PAUL R. ALMANZA
Associate Chief Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) that is received by the Administrative Review Board (“Board”) within thirty (30) calendar days of the date of issuance of the administrative law judge’s decision. *See* 29 C.F.R. § 501.42(a). The Board’s address is: Administrative Review Board, U.S. Department of Labor, Room S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file the Petition with the Board, you must serve it on all parties as well as the administrative law judge. *See* 29 C.F.R. § 501.42(a).

Alternatively, the Board offers an Electronic File and Service Request (“EFSR”) system. The EFSR for electronic filing (“eFile”) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file

new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (“eService”), which is simply a way to receive documents issued by the Board through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs, can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

If no Petition is timely filed, then the administrative law judge’s decision becomes the final order of the Secretary of Labor. Even if a Petition is timely filed, the administrative law judge’s decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 501.41(d), 501.42(a).