



In the Matter of:

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

ARB CASE NO. 05-016

ALJ CASE NO. 2003-CLA-2

PLAINTIFF,

DATE: December 17, 2004

v.

**DAVID K. SERVICE COMPANY and
DAVID KIM HARDING,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Plaintiff:

**Claire Brady White, Esq., Steven J. Mandel, Esq., Howard M. Radzely, Esq.,
Solicitor, U.S. Department of Labor, Washington, D.C.**

**ORDER GRANTING ACTING ADMINISTRATOR'S
MOTION TO WITHDRAW PETITION FOR REVIEW**

This case arose under the child labor provisions of the Fair Labor Standards Act as amended,¹ and the provisions' implementing regulations.² The Respondents, David K. Service Company and David Kim Harding, hired Cody Rasmussen, a sixteen-year-old minor, to work in their tree-trimming business. On March 3, 2001, Rasmussen was seriously injured when a piece of wood he was feeding into a wood chipper flew out and hit him on the head, fractured his skull and caused a whiplash injury. The Wage and Hour Division investigated the accident and determined that the Respondents had

¹ 29 U.S.C.A. §§ 212(c) and 216(e) (West 1998).

² 29 C.F.R. Parts 570, 579 and 580 (2004).

violated Hazardous Order 5³ when they required Rasmussen to feed wood into the chipper. The Acting Wage and Hour Administrator assessed \$8,500 in civil money penalties.

The Respondents appealed the Acting Administrator's assessment and a Department of Labor Administrative Law Judge reduced the civil money to \$4,000. The Acting Administrator filed an Appeal and Motion for Briefing Schedule on November 4, 2004, but on December 8, 2004, the Acting Administrator filed a Motion to Withdraw Petition for Review stating, "Upon further consideration, the Acting Administrator has determined not to pursue his appeal of the ALJ's decision." Motion to Withdraw Petition for Review at 1. Therefore, given the Acting Administrator's request to withdraw his Petition for Review, we **GRANT** his motion and **DISMISS** his appeal.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

³ 29 C.F.R. § 570.55. This regulation provides that feeding material into power-driven wood-working machines used for cutting wood is a particularly hazardous occupation for minors between 16 and 18 years of age.