



In the Matter of:

**D.F. OSBORNE CONSTRUCTION, INC.,
(General Wage Decision Number
KS160063 Mod. 8 (Apr. 4, 2017)
as applicable to “Renovation of the
Polk Plaza 1st Floor, for the Topeka
Housing Authority; Topeka, Kansas**

ARB CASE NO. 17-042

DATE: APR 13 2018

PETITIONER.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER DISMISSING APPEAL

Petitioner D.F. Osborne Construction, Inc. filed a petition under the Davis-Bacon Act (DBA),¹ stating that it “would like to formally appeal this decision and request a second review of the assigned wage rate [for glaziers] for the project named “Renovation of the Polk Plaza 1st Floor” in Topeka[,] Kansas for the Topeka Housing Authority.”

The Administrative Review Board has jurisdiction under the Davis-Bacon Act to “hear and decide in its discretion appeals concerning questions of law and fact from **final** decisions under [29 C.F.R. Part 1].”² Furthermore, “[a]ny interested person may appeal to the Administrative Review Board for a review of a wage determination or its application made under [Part 1], **after reconsideration has been sought pursuant to § 1.8 and denied.**”³ Section 1.8 requires the Administrator of the Wage and Hour Division to respond to a motion for reconsideration within 30 days or to notify the requestor within the 30-day period that additional time is necessary. Petitioner has not established that it has sought reconsideration pursuant to § 1.8 and that the Administrator (or duly authorized representative) has denied such reconsideration.

Given that it did not appear from the documents filed in support of the petition for review that Petitioner had obtained a final decision from the Administrator on a request for

¹ 40 U.S.C.A. §§ 3141-3148 (Thomson/West 2005, Supp. 2016). The DBA’s implementing regulations are found at 29 C.F.R. Part 1 (2016).

² 29 C.F.R. § 7.1(b) (emphasis supplied).

³ 29 C.F.R. § 1.9 (emphasis supplied).

reconsideration, we ordered Petitioner to show cause no later than May 25, 2017, why the Board should not dismiss its petition on the grounds that it had not yet obtained a final Administrator determination upon reconsideration as is necessary prior to obtaining ARB review. We cautioned Petitioner that if it failed to timely respond to this Order, its petition for review may be dismissed without further notice.

Petitioner has failed to respond to the Board's order. Accordingly, the petition is dismissed.

FOR THE ADMINISTRATIVE REVIEW BOARD:



Janet R. Dunlop
General Counsel

Note: Questions regarding any case pending before the Board should be directed to the Board's Paralegal Specialist, Juanetta Walker: Telephone: (202) 693-6200
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