



**In the Matter of:**

**NALINABAI P. CHELLADURAI,**  
  
**PETITIONER/  
PROSECUTING PARTY,**

**ARB CASE NO. 02-110**

**ALJ CASE NO. 02-LCA-0010**

**DATE: December 11, 2003**

**v.**

**CORE CONSULTANTS INC.,**  
  
**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearance:**

*For the Petitioner/Prosecuting party:*  
**Nalinabai P. Chelladurai, pro se, Sacramento, California**

**ORDER**

The Board issued a Final Order of Dismissal in this case on August 26, 2003. By motion filed with the Administrative Review Board on September 12, 2003, the Petitioner/Prosecuting Party Nalinabai P. Chelladurai requests the Board to reconsider its August 26 decision. For the reasons provided, we deny the request to modify the Board's Final Order of Dismissal.

The Board's August 26, 2003 Final Order of Dismissal affirmed an Order of Dismissal issued by the Administrative Law Judge (ALJ) on July 23, 2002. This case arises under 8 U.S.C.A. § 1182(n)(2) (West 1999), the enforcement provision of the H-1B visa program of the Immigration and Nationality Act (INA), as amended, 8 U.S.C.A. § 1101(a)(15)(H)(i)(B), and the implementing regulations at 20 C.F.R. Part 655, Subparts H and I (2002). Following an investigation by the Wage and Hour Division, the Administrator found that Respondent Core Consultants Inc. (Core) had failed to comply with wage requirements for Chelladurai and another H-1B employee. The Administrator determined that Core owed Chelladurai \$288.46, but Chelladurai disagreed and asserted that Core owed her \$4,615.39 instead. *See* Fin. Ord. of Dismissal at 2. Pursuant to 20 C.F.R. § 655.820, Chelladurai requested a hearing before the ALJ to pursue her claim. *See id.* Based on Chelladurai's failure to demonstrate good cause for not appearing at a calendar call that was preliminary to the hearing or not contacting the ALJ before or soon after the scheduled date of the calendar call, the ALJ determined that Chelladurai had abandoned the hearing request pursuant to 29 C.F.R. § 18.39(b). *See id.* at 3-4. On that basis,

the ALJ dismissed the case, and the Board's August 26, 2003 decision upheld that dismissal. *Id.* at 4-6.

The majority of the contentions presented in the Petitioner's motion for reconsideration are a reiteration of points that the Petitioner raised initially in her appeal to the Board and which the Board rejected in the Final Order of Dismissal. *See* Motion to Reconsider on the Final Order at 1-9. It is thus unnecessary for us to address those contentions again. The Petitioner does, however, allege error in two aspects of the Board's August 26, 2003 decision. Although these allegations lack merit, we provide the following explanation, in view of the Petitioner's pro se status.

First, the Petitioner challenges the Board's affirmance of the ALJ's conclusion that the training and other work-related demands cited by the Petitioner were inadequate to justify the Petitioner's failure to appear before the ALJ as scheduled or to contact him prior to or soon after her non-appearance. The Petitioner asserts that the Board stated that only a medical situation would provide adequate justification for the Petitioner's failure to either appear or to timely contact the ALJ regarding her non-appearance. Motion to Reconsider on the Final Order at 9. Contrary to that assertion, the Board and the ALJ both relied on the fact that the Petitioner had not experienced any "unanticipated emergency" that prevented her from appearing before the ALJ or contacting him. Neither the Board nor the ALJ indicated that an unanticipated emergency due only to a medical condition would have provided sufficient justification. Final Ord. of Dismissal at 4, 5; Ord. of Dismissal at 3. As the Board's decision indicates, the fact that the Petitioner did not experience an "unanticipated emergency" that prevented her appearance before the ALJ is significant because the Petitioner could have anticipated the work-related demands that she cited as the cause for her non-appearance. She thus had no justification for failing to contact the ALJ before the scheduled calendar call. Final Ord. of Dismissal at 5; *see* Ord. of Dismissal at 3; 29 C.F.R. § 18.39(b).

Secondly, the Petitioner asserts that neither the Board nor the ALJ considered whether the Respondent's absence from the calendar call "amount[ed] to waiver by the [R]espondent." Motion to Reconsider on the Final Order at 6. Both the ALJ and the Board noted that the Respondent appeared through counsel at the calendar call. Final Ord. of Dismissal at 6; Ord. of Dismissal at 3. Because the Respondent was represented by counsel at the calendar call, it was wholly unnecessary for the Respondent to appear personally to participate in scheduling the hearing on Chelladurai's claim for later that week. Furthermore, this "waiver" contention apparently relates to the Petitioner's misplaced argument that the ALJ should have entered a default decision in the Petitioner's favor, which the Board rejected in the August 26, 2003 decision. Final Ord. of Dismissal at 5-6.

Accordingly, the Motion is **DENIED**.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**