CYBERWORLD ENTERPRISE TECHNOLOGIES, INC. d/b/a TEKSTROM, INC.,

PETITIONER,

v.

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

PROSECUTING PARTY.

ARB CASE NO. 04-049

ALJ CASE NO. 2003-LCA-17

DATE: May 24, 2006

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Petitioner:

H. Ronald Klasko*, Klasko, Rulon, Stock & Seltzer, LLP, Philadelphia, Pennsylvania*

For the Prosecuting Party:

Steven J. Mandel, William C. Lesser, Paul L. Frieden, Joan Brenner, *United States Department of Labor, Washington, D.C.*

FINAL DECISION AND ORDER

This case arises under the Immigration and Nationality Act of 1990, as amended, (INA), 8 U.S.C.A. §§ 1101–1537 (West 1999 & Supp. 2004) and the regulations at 20 C.F.R. Part 655, Subparts H and I (2005). The Wage and Hour Division, United States Department of Labor (WHD) investigated Cyberworld Enterprise Technologies, Inc. d/b/a Tekstrom, Inc. (Tekstrom) after receiving a complaint.[1] Stip. No. 2. The INA

[1] The parties stipulated that Cyberworld Enterprise Technologies, Inc. legally changed its name to Tekstrom, Inc. on January 3, 2001. Stip. Nos. 2, 3.

requires that an employer who places an H-1B nonimmigrant worker with a secondary employer inquire of that secondary employer about non-displacement of United States workers. 8 U.S.C.A. § 1182(n)(1)(E)-(G); 20 C.F.R. §§ 655.738(d), 655.805(a)(8). The Administrator, WHD, determined that Tekstrom failed to make these inquiries in fourteen instances. Exhibit B. The WHD assessed a $3,400.00 civil money penalty. *Id.* WHD also informed Tekstrom that it would notify the Attorney General and the Employment and Training Administration, United States Department of Labor (ETA) of the violation. The Attorney General, upon receipt of WHD's notification, must disapprove any petition that Tekstrom files under 8 U.S.C.A. §§ 1154(c) and 1184(c) for any future hire of an H-1B nonimmigrant worker for a period of at least one year from the date of receipt of the notification. Furthermore, ETA must invalidate any currently filed Labor Condition Application (LCA) and must not accept for filing any new LCA or corresponding attestation for the period the Attorney General sets. 8 U.S.C.A. § 1182(n)(2)(B); 20 C.F.R. §§ 655.855(c), (d), 655.810(d)(1).

Tekstrom challenged the WHD's determination. In a pre-trial Order, the Administrative Law Judge (ALJ) rejected, inter alia, Tekstrom's argument that the failure of the Administrator, WHD, to comply with the requirement that she "shall" issue a determination within thirty days after the filing of the complaint, deprived her of jurisdiction to proceed against Tekstrom. *See* 8 U.S.C.A. § 1182(n)(2)(B); 20 C.F.R. § 655.806(a)(3). The ALJ relied on the decision of the Administrative Review Board (ARB) in *United States Dep't of Labor v. Nurses PRN,* ARB No. 97-131, ALJ No. 94-ARN-1, slip op. at 9 (ARB June 30, 1999). Citing *Brock v. Pierce County,* 476 U.S. 253, 259 (1986), *Nurses PRN* held that the 180-day limitation for conducting investigations under the Immigration Nursing Relief Act of 1989 was not mandatory "where the statute establishing the limitations period carries none of the indicia that would divest the administrator of the authority to investigate after expiration of the limitation." *Nurses PRN,* slip op. at 9. Therefore, the ALJ concluded that the thirty-day limitation is directory, not mandatory, and the Administrator is not deprived of jurisdiction to proceed against Tekstrom.

The parties subsequently entered into Joint Stipulations of fact, and filed cross-motions for summary judgment. The ALJ adjudicated the case as a decision on the record. He found that the parties' Joint Stipulations indicated that there was no factual dispute. Initial Decision and Order at 1. The ALJ determined that Tekstrom failed to inquire of secondary employers about non-displacement of United States workers. *Id.* at 11-12. The ALJ affirmed the $3,400.00 civil money penalty, and further ordered that the Attorney General and ETA be notified of Tekstrom's violation. *Id.* at 19-22.

Tekstrom appeals from the ALJ's decisions. The Administrator, WHD, asks us to affirm them. Tekstrom has filed a reply brief.

The ARB has jurisdiction to review an ALJ's decision under the INA. 8 U.S.C.A. § 1182(n)(2) and 20 C.F.R. § 655.845. *See also* Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002) (delegating to the ARB the Secretary's authority to review cases arising under, inter alia, the INA). The Board reviews the ALJ's decision de novo.

United States Dep't of Labor v. Kutty, ARB No. 03-022, ALJ Nos. 2001-LCA-10 to 25, slip op. at 4 (ARB May 31, 2005); *Yano Enters., Inc. v. Administrator*, ARB No. 01-050, ALJ No. 2001-LCA-0001, slip op. at 3 (ARB Sept. 26, 2001); *Administrator v. Jackson*, ARB No. 00-068, ALJ No. 1999-LCA-0004, slip op. at 3 (ARB Apr. 30, 2001). *See generally Mattes v. United States Dep't of Agric.*, 721 F.2d 1125, 1128-1130 (7th Cir. 1983) (rejecting argument that higher level administrative official was bound by ALJ's decision); *McCann v. Califano*, 621 F.2d 829, 831 (6th Cir. 1980), and cases cited therein (sustaining rejection of ALJ's decision by higher level administrative review body).

We affirm the ALJ's conclusions as he correctly applied the relevant statutes, regulations, and case precedent. His decisions are thorough and well reasoned. Therefore, we attach and incorporate the ALJ's December 23, 2003 Initial Decision and Order and his September 25, 2003 Denial of Respondent's Cross-Motion for Summary Decision, Denial of Motion to Compel, Continuance Order.

Accordingly, we **AFFIRM** the ALJ's December 23, 2003 Initial Decision and Order and his September 25, 2003 Denial of Respondent's Cross-Motion for Summary Decision, Denial of Motion to Compel, Continuance Order.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge