



In the Matter of:

DONGSHENG HUANG,

**ARB CASE NOS. 09-056
09-044**

COMPLAINANT,

ALJ CASE NO. 2008-LCA-011

v.

DATE: November 10, 2011

ULTIMO SOFTWARE SOLUTIONS, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Dongsheng Huang, *pro se*, Houston, Texas

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Luis A. Corchado, *Administrative Appeals Judge*; and Joanne Royce, *Administrative Appeals Judge*

ORDER DENYING RECONSIDERATION

This case is before the Administrative Review Board (ARB or Board) based on a complaint Dongsheng Huang filed under the Immigration and Nationality Act, as amended (INA or the Act) and its implementing regulations. 8 U.S.C.A. §§ 1101-1537 (West 1999 & Thomson Reuters Supp. 2011); 20 C.F.R. Part 655, Subparts H and I (2011). Huang complained that his employer, Ultimo Software Solutions, Inc., did not pay him his wages and retaliated against him. After a hearing, a Department of Labor (DOL) Administrative Law Judge (ALJ) agreed with these contentions. The ALJ ordered

Ultimo to pay Huang, (1) wages until the September 15, 2008 end of the Labor Condition Application's period of employment; (2) compensation for health care benefits and retirement plan contributions, and (3) reimbursement of litigation travel costs. The ALJ also awarded certain equitable relief. Both Huang and Ultimo appealed.

In our Decision and Order dated March 31, 2011, we reviewed the record and found that it supports the ALJ's recitation of facts and resolution of conflicting evidence. Therefore, the ARB agreed with the ALJ's findings of fact and conclusions of law and summarily affirmed his Decision and Order awarding back pay, compensation, reimbursement of costs, and equitable relief. *Huang v. Ultimo Software Solutions, Inc.*, ARB Nos. 09-056, -44; ALJ No. 2008-LCA-011 (ARB Mar. 31, 2011).

On April 25, 2011, Huang filed a Motion to Reconsider. Huang agrees with the ARB's decision to affirm the ALJ's Decision and Order. Huang asserts, however, that the Board failed to consider certain issues and to rule on then-pending motions.

The ARB is authorized to reconsider a decision upon the filing of a motion for reconsideration within a reasonable time of the date on which the Board issued the decision. *Henrich v. Ecolab, Inc.*, ARB No. 05-030, ALJ No. 2004-SOX-051, slip op. at 11 (ARB May 30, 2007). In considering whether to reconsider a decision, the Board has applied a four-part test to determine whether the movant has demonstrated:

- (i) material differences in fact or law from that presented to a court of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the court's decision; (iii) a change in the law after the court's decision, and (iv) failure to consider a material fact presented to court before its decision.

See Daisy Abdur-Rahman v. DeKalb County, ARB Nos. 08-003, 10-074; ALJ Nos. 2006-WPC-002, -003; slip op. at 4 (ARB Feb. 16, 2011).

Huang asserts that the Board ignored his claims to "front pay" with tax enhancement, compensatory and punitive damages, and reimbursement of benefits and litigation costs. The record shows, however, that the ARB affirmed the ALJ's award on each of these claims. *Huang*, ARB Nos. 09-056, -44, slip op. at 2, 4-6. Huang also asserts that the Board ignored his argument that certain documents were fabricated and should be omitted from the record. But the ARB upheld the ALJ's resolution of conflicting evidence, specifically noting his finding that certain documents were fabricated, which resulted in failures of proof on Ultimo's part. *Id.* at 2, 3 n.9.

Huang further contends that the ARB did not review certain procedural rulings the ALJ made. The ARB reviews an ALJ's determinations on procedural issues, evidentiary rulings, and sanctions under an abuse of discretion standard, i.e., whether, in ruling as he did, the ALJ abused the discretion vested in him to preside over the proceedings. *Harvey*

v. Home Depot U.S.A., Inc., ARB Nos 04-114, -115; ALJ Nos. 2004-SOX-020, 2004-SOX-036; slip op. at 8 (ARB June 2, 2006). The ARB permissibly affirmed the ALJ's Order "in all other respects" including his "discretionary rulings." *Huang*, ARB Nos. 09-056, -44, slip op. at 5 n.25.

Huang also argues that the ARB "failed to consider" issues the Board specified for review in its February 12, 2009 Notice of Intent to Review, suggesting that without an explicit ruling the ARB fails to consider an issue. Motion to Reconsider at 1. The regulation at 20 C.F.R. § 655.845(e), however, requires only that the ARB specify the issue or issues to be reviewed and does not mandate explicit rulings.

Lastly, Huang asserts that the ARB did not rule on motions that were pending while the case was on review. Those motions, however, were mooted by the ARB's March 31, 2011 Decision and Order.

Because Huang's Motion to Reconsider does not refer to a difference in fact or law from that presented to the Board, or refer to a new, material change in fact or law, or point to any failure by the Board to consider material facts, it does not satisfy any of the above-mentioned circumstances under which we will reconsider our Decision and Order. Therefore, Huang's Motion to Reconsider is **DENIED**.¹

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

¹ The appropriate United States District Court has review authority over final agency action under the INA's H-1B visa program. 20 C.F.R. § 655.850.