



In the Matter of:

PARMINDER SINGH WALIA,

ARB CASE NO. 14-002

PROSECUTING PARTY,

ALJ CASE NO. 2013-LCA-005

v.

DATE: February 27, 2015

THE VERITAS HEALTHCARE  
SOLUTIONS LLC,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

*For the Complainant:*

Parminder Singh Walia, *pro se*, Sec. 50, Chandigarh, Union Territory, India

*For the Respondent:*

Zeynel Karcioğlu, Esq.; *Jacobs & Burleigh, LLP*; New York, New York

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; and Lisa Wilson Edwards, *Administrative Appeals Judge*

## FINAL DECISION AND ORDER

This case arises under the Immigration and Nationality Act, H-1B visa program, 8 U.S.C.A. §§ 1101(a)(15)(H)(i)(b), 1182(n) (Thomson Reuters 2014), and implementing regulations, 20 C.F.R. Part 655, Subparts H, I (2014). Veritas Healthcare Solutions LLC hired Parminder Singh Walia, a pharmacist from India, as an H-1B employee in July 2011 to perform clinical research. Walia filed a complaint with the Wage and Hour Division (WHD) stating that Veritas failed to provide him with work and pay proper wages in contravention of the Labor Condition Application. Veritas countered that Walia was habitually late and refused work. After an investigation, the Wage and Hour Division, United States Department of Labor (WHD), issued a determination on October 19, 2012, awarding Walia \$1,956 in back wages for violations

of the implementing regulations at 20 C.F.R. Part 655. Walia filed objections with the Office of Administrative Law Judges (OALJ). On September 10, 2013, the ALJ entered an Order dismissing the case due to Walia's failure to respond to discovery. Walia petitions the Administrative Review Board (ARB) for review. We affirm.

## BACKGROUND

On February 26, 2013, the ALJ set the case for hearing to take place on July 8 and issued a prehearing order with a discovery schedule. An initial conference hearing was to take place via telephone on March 15, 2013, which was delayed until March 21, 2013. Discovery was to be concluded before the submission of prehearing statements, which were due on June 24, 2013. The prehearing order directed parties to resolve discovery disputes internally as much as possible. During the March 21 telephone conference, the ALJ explained the discovery process to Walia.

On May 20, 2013, Veritas issued a notice to produce documents and also issued interrogatories. On June 12, 2013, Veritas issued a notice for oral deposition to take place on June 20, 2013, via telephone.

Between June 12 and June 20, Veritas and Walia exchanged e-mails. Walia July 20 Mot. for Prot. Order, Exhs. Walia objected to taking a deposition out of court. Walia wanted to participate in a hearing but did not wish to give deposition testimony. On June 19, 2013, Veritas sent a reminder e-mail to Walia that the oral deposition was scheduled for June 20 at 10 a.m. Veritas warned Walia about cancellation fees for transcript services if Walia did not participate in the deposition. That same day, Veritas notified Walia by e-mail that it had not received any documents from prior discovery requests and threatened to move to strike Walia's presentation of evidence if the requested discovery was not produced.

On June 20, Walia sought a protective order. Walia argued that discovery was barred by the rule allowing access to materials generated in preparation for trial, 29 C.F.R. § 18.14(c), because Veritas did not have a substantial need for the documents. Walia claimed that Veritas's discovery requests were late and not in compliance with the ALJ's order to begin immediately. In reply to one request, Walia stated that the information is available via other means and that he should not have to produce the document. Walia claimed that this WHD proceeding is ancillary to another proceeding and thus fits within an exemption from discovery found in the federal rules of civil procedure.

On June 20, 2013, Veritas objected to Walia's protective order. Veritas moved the ALJ to either compel discovery or to bar Walia's testimony or bar his introduction of documentary or other evidence because he refused to provide responses to its discovery requests.

On June 26, 2013, the ALJ entered an Order denying Walia's motion for a protective order and granting Veritas's motion to compel. *Walia v. Veritas Healthcare*, ALJ No. 2013-

LCA-005 (June 26, 2013). The ALJ observed that Walia's motion for a protective order was erroneously based on an exception to materials generated in preparation for trial in § 18.14(c). *Id.*, slip op at 1-2. The ALJ instructed Walia that the documents that Veritas sought would only be subject to the requirements of 18.14(a), which requires that the documents be relevant and not privileged. The ALJ rejected Walia's other bases for granting a protected order as unsubstantiated. *Id.*, slip op. at 2-3. The ALJ ordered that Walia comply with all discovery requests by July 5, 2013.

The ALJ and the parties discussed the discovery issue by telephone conference on June 27, 2013. During the conference hearing, they reset the deposition for July 8, 2013, and the hearing for July 23, 2013.

Veritas e-mailed Walia on July 2 seeking Walia's participation in a rescheduled deposition and discovery and warning Walia that it would renew its motion for dismissal if noncompliance continues.

On July 3, 2013, Walia requested that the ALJ dismiss his hearing without prejudice and dismiss his pending deposition and discovery requests. Walia claimed that he was unable to participate in a telephonic deposition. Walia also objected to the ALJ's rescheduling of the hearing from July 8, 2013, to July 23, 2013. Walia claimed that any deposition requests should have complied with the Hague Convention.

On July 12, 2013, Walia clarified his July 3 letter by stating that he did not wish to dismiss the case but rather sought a postponement of the hearing for another thirty days.

On July 19, Veritas renewed its motion to dismiss as a sanction for noncompliance. Veritas also sought attorney's fees for the failed discovery and deposition attempts.

On July 24, 2013, the ALJ issued an order responding to parties' motions. *Walia v. Veritas Healthcare*, ALJ No. 2013-LCA-005 (July 24, 2013). The ALJ construed Walia's motion as not withdrawing his complaint but rather making a new objection to Veritas's discovery requests for violating the Hague Convention. *Id.*, slip op. at 1-2. The ALJ cited to *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for S.D. Iowa*, 482 U.S. 522, 541 (1987), for the proposition that while the Hague Convention rules apply to discovery requests of foreign litigants, the Hague Convention was not meant to be the exclusive means of prehearing discovery but rather an optional procedure when its procedures provide a better alternative than local rules to international evidence issues. *Id.*, slip op. at 2. The ALJ ruled that Walia failed to show that the Hague Convention should apply to Veritas's discovery requests. *Id.* The ALJ treated Walia's letter as a request for reconsideration of the ALJ's order to compel, which she rejected and again ordered Walia to respond to Veritas's discovery requests by August 4, 2013. The ALJ ordered that the parties set a telephone deposition date and inform the ALJ of the date within ten days. The ALJ noted that both parties had participated in telephone conferences with the ALJ. The ALJ reminded Walia of the ALJ's sanction powers for noncompliance, including

dismissal of the case. Specifically, the ALJ indicated that if Walia did not comply with Veritas's discovery requests, she would grant Veritas's motion to dismiss with prejudice.

August 4, 2013, came and went. On August 5, Veritas informed the ALJ of the lack of discovery, and Walia's failure to schedule a deposition. On August 7, 2013, the ALJ issued a show cause order asking why the case should not be dismissed for failure to participate in discovery. On September 10, 2013, the ALJ issued an order dismissing Walia's case due to Walia's failure to respond to the show cause order. Walia appealed the ALJ's decision and order to the Administrative Review Board (ARB or Board).

### **JURISDICTION AND STANDARD OF REVIEW**

The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the H-1B program. Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); 20 C.F.R. § 655.845. Under the Administrative Procedure Act, the ARB, as the Secretary of Labor's designee, acts with "all the powers [the Secretary] would have in making the initial decision . . . ." 5 U.S.C.A. § 557(b) (Thomson Reuters 2014).

### **DISCUSSION**

Walia's petition for review and opening brief make several assertions. The ALJ dismissed Walia's complaint for failure to respond to the show cause order. Walia, however, claims that he submitted a responsive pleading by fax on August 21, 2013. The ALJ's record contains an eight-page fax. The record is not clear on whether the ALJ did not receive Walia's August 21 fax, or received it but did not consider it responsive to the show cause order. For purposes of this appeal, we will presume that the ALJ received the pleading but did not treat it as responsive to the order. Based on that presumption, it is clear that the August 21 fax Walia submitted was unresponsive to the show cause order. The fax contained a multitude of incomprehensible claims of ALJ wrongdoing, human trafficking, and human rights violations. The fax did not offer a justification as to why Walia did not participate in discovery besides rehashing the Hague Convention argument, which had already been decided.<sup>1</sup>

ALJs have "inherent authority" to "manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Newport v. Fla. Power & Light, Co.*, ARB No. 06-110, ALJ No. 2005-ERA-024, slip op. at 4 (ARB Feb. 29, 2008); *see also* 29 C.F.R. § 18.29(a)("[i]n

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<sup>1</sup> The ALJ ruled that the Hague Convention does not require foregoing the federal rules or ALJ discovery rules when those rules serve the purpose effectively. ALJ Order, slip op. at 2, (July 24, 2013)(citing *Societe Nationale Industrielle Aerospatiale*, 482 U.S. at 541). Walia, as the ALJ found, has not offered any examples or arguments as to the insufficiency of the federal or ALJ rules. *Id.* at 2-3.

any proceeding . . . the [ALJ] shall have all powers necessary to the conduct of fair and impartial hearings”). Here, the ALJ dismissed Walia’s case after he repeatedly failed to respond to discovery orders and provided insufficient justification for his failures.

In reviewing the ALJ’s order dismissing Walia’s case, we must determine whether the ALJ abused her discretion. *See Supervan, Inc.*, ARB No. 00-008, ALJ No. 1994-SCA-014, slip op. at 3-4 (ARB Sept. 30, 2002). The Board reviews an ALJ’s procedural rulings for abuse of discretion, i.e., whether, in ruling as she did, the ALJ abused the discretion vested in her to preside over the proceedings. *Stalworth v. Justin Davis Enter., Inc.*, ARB No. 09-038, ALJ No. 2009-STA-001, slip op. at 3 (ARB June 16, 2010). The ALJ explained the discovery regulations to Walia and repeatedly warned him of the potential consequences of failing to participate in discovery. Taking into account Walia’s pro se status, the ALJ was lenient, given his lack of legal training, and gave him a number of opportunities to fulfill his obligations as a litigant. The show cause order requested Walia to show cause why the ALJ should not dismiss his complaint due to his repeated failure to comply with discovery orders. The show cause order informed Walia that failure to respond could result in dismissal of the complaint.<sup>2</sup> Although the ALJ dismissed Walia’s complaint for failure to respond to the show cause order, the ALJ was within her discretion to dismiss even if the fax was considered a response because the fax neither addressed the order, nor demonstrated any good cause for his repeated failure to participate in discovery.<sup>3</sup>

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<sup>2</sup> The ALJ is permitted to “Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.” 29 C.F.R. § 18.6(d), (v) (sanctions for noncompliance).

<sup>3</sup> *Matthews v. Ametek, Inc.*, ARB No. 11-036, ALJ No. 2009-SOX-026 (ARB May 31, 2012); *Lewman v. Ken Brick Masonry Supply*, ARB No. 07-01, ALJ No. 2006-STA-018, slip op. at 4 (ARB Oct. 31, 2007) (“Dismissal as a sanction for failure to prosecute is a matter within the ALJ’s sound discretion.”). If the decision below is correct, it must be affirmed, although the lower court relied upon a different reason. *Knight v. Mills*, 836 F.2d 659, 661 (1st Cir. 1987) (citing *Helvering v. Gowran*, 302 U.S. 238, 245 (1937)); *Canter v. Maverick, Transp. LLC.*, ARB No. 11-012, ALJ No. 2009-STA-054, slip op. at 6 n.5 (ARB June 27, 2012).

**CONCLUSION**

For the foregoing reasons, the ALJ's order dismissing the complaint is **AFFIRMED**.<sup>4</sup>

**SO ORDERED.**

**JOANNE ROYCE**  
**Administrative Appeals Judge**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**LISA WILSON EDWARDS**  
**Administrative Appeals Judge**

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<sup>4</sup> In affirming the ALJ, we dismiss: Walia's motions to take action against ALJ Timlin; to dismiss Veritas's attorneys; to take action against Veritas for false claims; to remedy Walia's failure to seek and obtain transcripts and records, and other miscellaneous grievances that do not affect the outcome of the decision.