



In the Matter of:

**EVERGREEN FORESTRY SERVICES,
INC. a/k/a FOR-EVERGREEN
FORESTRY SERVICES, INC.,**

ARB CASE NO. 09-119

ALJ CASE NO. 2005-MSP-006

and

DATE: July 29, 2009

PETER SMITH III,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**ORDER DENYING PETITION FOR NOTICE OF
INTENT TO MODIFY OR VACATE**

This case arose when the United States Department of Labor's Wage and Hour Administrator refused to issue a farm labor contractor certificate of registration to Evergreen and a farm labor contractor employee certificate of registration to Peter Smith III because of their failure to comply with the requirements of the Migrant and Seasonal Agricultural Workers Protection Act (MSPA).¹ The case was referred to a Department of Labor Administrative Law Judge (ALJ) for hearing. On June 25, 2009, the ALJ issued a Decision and Order granting the Administrator's Motion for Summary Judgment and affirming the Administrator's refusal to grant the certificates.²

The MSPA and its implementing regulations provide that the Secretary of Labor may deny certificates of registration if the applicant has failed to comply with the MSPA or its regulations.³ The ALJ found that Department of Labor records establish that the Wage and Hour Division had investigated the Respondents on a number of occasions in

¹ 29 U.S.C.A. § 1801-1872 (West 1999), 29 C.F.R. Part 500.

² *In re Evergreen Forestry Servs.*, 2005-MSP-006 (D. & O.).

³ 29 U.S.C.A. § 1813(a)(3); 29 C.F.R. § 500.51(c).

various locations throughout the United States and that those investigations revealed that the Respondents had violated a number of the provisions of the MSPA and its regulations.⁴ As a result of these investigations, the Department of Labor assessed civil money penalties against the Respondents, which the Respondents paid without contest.⁵ In particular the ALJ cited to the Respondents' violations of the MSPA and consequent civil money penalties resulting from a vehicle crash in Northern Maine in which 14 migrant forestry workers were killed when the van the Respondents had provided to transport the workers plunged off of a bridge into the Allagash River.⁶ Accordingly, the ALJ concluded:

In Sum, I find that Respondents were well aware of the applicability of MSPA to their operations. Moreover, Respondents do not deny – nor could they – their long and extensive history of non-compliance with MSPA and the applicable regulations. The MSPA and its regulations unequivocally permit the Secretary to refuse to issue a Certificate of Registration when non-compliance is established. These circumstances have been clearly established here, where it has been shown that Evergreen/Smith has failed on many occasions to comply with the MSPA. Given Respondents' failure to comply with the MSPA, there is more than sufficient basis for the Secretary's refusal to issue FLC/FLCE Certificates of Registration. No genuine issue of fact exists, and, thus, the Plaintiff is entitled to summary judgment as a matter of law.^[7]

Pursuant to the MSPA's implementing regulations, a party desiring review of an administrative law judge's decision may file a petition for Notice of Intent to Modify or Vacate with the Secretary of Labor within 20 days of the date on which the judge issued

⁴ D. & O. at 3.

⁵ *Id.*

⁶ *In re Evergreen Forestry Servs. Inc.*, ARB No. 05-029, ALJ No. 2003-MSP-002 (ARB Feb. 28, 2006).

⁷ D. & O. at 7.

the decision.⁸ Furthermore all documents filed by mail must be received on or before their due date.⁹

Smith filed a petition requesting the Administrative Review Board to issue a Notice of Intent to Modify or Vacate the ALJ's D. & O. The Board received this petition on July 16, 2009, 21 days after the date on which the ALJ issued his D. & O. Thus, Smith's petition was untimely filed.

Nevertheless, even if Smith had filed a timely petition, we would have denied it. We conclude that Smith has failed to raise any legally sound challenge to the ALJ's D. & O. He does not deny that he has violated the MSPA and its regulations and his attempts to excuse his violations and diminish their severity and his disinclination to acknowledge his responsibility for them provide no legal basis upon which we would consider modifying or vacating the D. & O. Accordingly, the ALJ's D. & O. shall constitute the final order of the Secretary in this matter.¹⁰

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

⁸ 29 C.F.R. § 500.264(a). The Secretary of Labor has delegated her authority to issue final agency decisions under MSPA sections 1813 and 1853 to the Administrative Review Board. Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002).

⁹ 29 C.F.R. § 500.267(c).

¹⁰ 29 C.F.R. § 500.262(g).