



In the Matter of:

**CHARLES IGWE, AND KSC-TRI
SYSTEMS USA, INC., d/b/a KSC TRI
SYSTEMS, INC., USA, KSC-TRI
SYSTEMS, KSC-TRI SYSTEM
COMPANY, TOTAL RESOURCES
INDUSTRIES, PREFERRED
EDUCATIONAL DIAGNOSTICS &
TESTING CENTER, PREFERRED
EDUCATIONAL DIAGNOSTIC TRAINING
CENTER, AND TOTAL FIT-WELL,**

ARB CASE NO: 07-120

ALJ CASE NO: 2006-SCA-020

DATE: November 25, 2009

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For Respondents:

Charles Igwe, *pro se*, Granada Hills, California

For Administrator, Wage and Hour Division:

**Roger Wilkinson, Esq., William C. Lesser, Esq., Steven J. Mandel, Esq., *United States
Department of Labor, Washington, District of Columbia***

FINAL DECISION AND ORDER

Federal service contractors who violate the McNamara-O'Hara Service Contract Act (SCA or the Act)¹ shall not be awarded federal contracts for three years unless they can prove "unusual circumstances."² A United States Department of Labor Administrative Law Judge

¹ 41 U.S.C.A. §§ 351-358 (West 1994).

² *Id.* at § 354(a).

(ALJ) concluded that the Respondents, Charles Igwe, and KSC-TRI Systems USA, Inc., d/b/a KSC TRI Systems, Inc., USA, KSC-TRI Systems, KSC-TRI System Company, Total Resources Industries, Preferred Educational Diagnostics & Testing Center, Preferred Educational Diagnostic Training Center, and Total Fit-Well, violated the Act and did not prove “unusual circumstances” to warrant relief from the Act’s debarment sanction. Since a preponderance of the evidence supports the ALJ’s findings, we affirm the ALJ’s Decision and Order (D. & O.).

BACKGROUND

The ALJ thoroughly discussed the facts of this case as presented at the hearing on April 16, 17, and 18, 2007.³ We summarize briefly.

Between December 2002 and July 2004, KSC-Tri Systems USA, Inc., a California corporation, and Charles Igwe, its owner and highest ranking officer, entered into four contracts with the federal government to provide service employees at the following locations: (1) Fairchild Air Force Base in California (Fairchild contract); (2) two Department of Defense sites in San Joaquin County, California (Tracy contract); (3) the Federal Correctional Center in Coleman, Florida (Coleman contract); and (4) McChord Air Force Base in the state of Washington (McChord contract).⁴ The SCA governed these contracts.⁵ Each contract and contract extension incorporated the requirements of the SCA and attached or referenced the applicable wage determinations.⁶

³ D. & O. 4-16.

⁴ Administrator’s Exhibit (AX) at 28, 72, 82, 83, 85-95, 123, 321, 324, 343, 349, 358, 474-475, 925, 927, 971, 1017-1018, 1072; Hearing Transcript (Tr.) at 288.

⁵ The SCA generally requires that every contract in excess of \$2,500 entered into by the United States, the principal purpose of which is to provide services through the use of service employees in the United States, must contain a provision that specifies the minimum hourly wage and fringe benefit rates that are payable to the various classifications of service employees working on such a contract. *See* 41 U.S.C.A. § 351(a)(1)-(2). These wage and fringe benefit rates are predetermined by the Wage and Hour Division acting under the authority of the Administrator, who the Secretary of Labor has designated to administer the Act.

⁶ Administrator’s Exhibit (AX) at 83, 85-95, 123, 343, 349, 927-928, 1072; Tr. at 288. Under the Fairchild contract with the U.S. Air Force, the Respondents agreed to provide test administrators at the Fairchild Air Force Base. AX at 28, 1017-1018. Under the Tracy contract with the U.S. Department of Defense, the Respondents agreed to provide recreational specialists at two sites in San Joaquin County, California. AX at 474-475, 971. Under the Coleman contract with the U.S. Department of Justice, Bureau of Prisons, the Respondents agreed to provide culinary arts instructors at the Federal Correctional Center in Coleman, Florida. AX at 321, 324, 358, 925. Finally, under the McChord contract with the U.S. Air Force, the Respondents agreed to provide aerobics instructors at the McChord Air Force Base. AX at 72, 82. The value of each contract was more than \$2,500. AX at 83, 85-95, 123, 343, 349, 927, 1072.

The Department of Labor's Wage and Hour Division investigated the Respondents' performance on each of the four contracts.⁷ The investigations revealed that the Respondents failed to pay some of their employees the required wage rates and fringe benefits in accordance with the SCA. The Respondents also failed to pay holiday and overtime compensation and did not comply with the Act's recordkeeping requirements. As a result of the violations, the investigators found that the Respondents owed \$50,297.40 in back wages to eighteen employees.⁸ Finally, according to the investigators' testimony, the Respondents were not cooperative with the investigators and failed to come into compliance after the investigators informed them of the violations. As of the date of the hearing, over a year after the investigators had repeatedly pointed out the violations to the Respondents, they still had not come into compliance or paid their employees the back wages found due as a result of the investigations.⁹ At the hearing, Igwe promised compliance, but when asked whether he had corrected the practices that led to the violations, he told the ALJ that they were "working on it."¹⁰

The Solicitor of Labor filed a complaint with the Office of Administrative Law Judges on May 31, 2006, alleging underpayments of prevailing wages and fringe benefits as well as other SCA violations on all four contracts.¹¹ The Solicitor requested that the Respondents be debarred from receiving U.S. Government contracts for three years.¹² The Respondents ultimately responded to the complaint, urging that they not be debarred.

The ALJ held a hearing in April 2007 in Long Beach, California, and issued a D. & O. on August 7, 2007, followed by a Supplemental and Amending Decision and Order on October 4, 2007, and an Order Amending Supplemental Decision and Order and Amending Original

⁷ Complaint at 1-4; Tr. 49, 53, 57-58, 85, 88, 92-93, 160-164, 276-277, 288-289, 888-889,

⁸ Pursuant to the ALJ's D. & O., the Wage and Hour Division revised its back wage assessment to \$54,443.13 after the hearing. See Supplemental and Amending Decision and Order dated October 4, 2007, and Order Amending Supplemental Decision and Order and Amending Original Decision and Order dated October 22, 2007.

⁹ At the Administrator's request the contracting agency withheld \$13,810 in accrued contract payments on the Tracy contract and pursuant to 29 C.F.R. § 4.6(i) the contracting agencies withheld \$12,796.26 in accrued contract payments through cross-withholding on other federal contracts awarded to the Respondents. Tr. at 408, 411-414; AX at 258,1063,

¹⁰ Tr. at 486.

¹¹ *Id.*; ALJ Exhibit (ALJX) 1, Complaint.

¹² Complaint at 6-7. The Solicitor requested debarment under both the SCA and the Contract Work Hours and Safety Standards Act, 40 U.S.C.A. § 3702 (West 2006) (CWHSSA). *Id.* The ALJ ordered debarment only under the SCA. D. & O. at 33-34.

Decision and Order on October 22, 2007.¹³ Based on the evidence of record, the ALJ concluded that the Respondents had violated the SCA and had not established “unusual circumstances” to warrant relief from the Act’s debarment sanction. Therefore, the ALJ ordered that the Respondents pay back wages of \$54,443.13 and prejudgment interest of \$7,753.67 to eighteen employees and that the Respondents be debarred from contracting with the U.S. Government for three years.¹⁴ The Respondents filed a Petition for Review with the Administrative Review Board (ARB or the Board).¹⁵

JURISDICTION AND STANDARD OF REVIEW

The Board has jurisdiction to decide this case.¹⁶ In rendering its decisions, “the Board shall act as the authorized representative of the Secretary of Labor and shall act as fully and finally as might the Secretary of Labor concerning such matters.”¹⁷

The Board’s review of an ALJ’s decision is an appellate proceeding.¹⁸ The Board shall modify or set aside an ALJ’s findings of fact only when it determines that those findings are not supported by a preponderance of the evidence.¹⁹ But the Board reviews conclusions of law de novo.²⁰

¹³ The Supplemental and Amending D. & O. corrected a typographical error and issued back wage prejudgment interest findings based on the Solicitor’s corrected calculations of back wages on the Tracy contract as well as calculations of prejudgment interest on all four contracts. The Order Amending Original D. & O. withdrew the Notice of Appeal Rights in the D. & O. and issued a revised Notice of Appeal Rights.

¹⁴ D. & O. at 33-34; Supplemental and Amending D. & O. at 1-2.

¹⁵ 29 C.F.R. § 6.20 (2009).

¹⁶ 29 C.F.R. § 8.1(b).

¹⁷ 29 C.F.R. § 8.1(c).

¹⁸ 29 C.F.R. § 8.1(d).

¹⁹ 29 C.F.R. § 8.9(b). *See Dantran, Inc. v. U.S. Dep’t of Labor*, 171 F.3d 58, 71 (1st Cir. 1999).

²⁰ *SuperVan, Inc.*, ARB No. 00-008, ALJ No. 1994-SCA-014, slip op. at 3 (ARB Sept. 30, 2002); *United Kleenist Org. Corp. & Young Park*, ARB No. 00-042, ALJ No. 1999-SCA-018, slip op. at 5 (ARB Jan. 25, 2002).

DISCUSSION

1. The Legal Standards

The SCA and its implementing regulations require payment of prevailing wages, fringe benefits and holiday pay on Federal contracts subject to the Act.²¹ In addition, the SCA regulations require contractors to maintain accurate payroll records.²² The Contract Work Hours and Safety Standards Act (CWHSSA) requires payment of overtime rates for work performed in excess of 40 hours per week on Federal contracts.²³

Under SCA Section 5(a), persons or firms that violate the Act are subject to debarment, that is, ineligible to receive federal contracts for a period of three years “[u]nless the Secretary otherwise recommends because of unusual circumstances.”²⁴ Debarment is presumed once violations of the Act have been found, unless the violator is able to show that “unusual circumstances” exist.²⁵ “Section 5(a) is a particularly unforgiving provision of a demanding statute. A contractor seeking an ‘unusual circumstances’ exemption from debarment, must, therefore, run a narrow gauntlet.”²⁶

The SCA does not define “unusual circumstances.” Relevant regulations, however, establish a three-part test that states the criteria for determining when relief from debarment is appropriate. The contractor has the burden of proving “unusual circumstances” and must meet all three parts of the test to be relieved from the debarment sanction.²⁷ Under the first part of this test, the contractor must establish that the conduct giving rise to the SCA violations was not willful, deliberate, aggravated, or the result of culpable conduct. Moreover, the contractor must

²¹ 41 U.S.C.A. § 351; 29 C.F.R. §§ 4.172, 4.174.

²² 29 C.F.R. §§ 4.6(g), 4.185.

²³ 40 U.S.C.A. § 3702. The CWHSSA is considered to be one of the Davis-Bacon Related Acts, and is subject to the implementing regulations found at 29 C.F.R. Part 5. *See* 29 C.F.R. § 5.1. The Part 5 regulations include a separate recordkeeping requirement. *See* 29 C.F.R. § 5.5(a)(3).

²⁴ 41 U.S.C.A. § 354(a); 29 C.F.R. § 4.188(a), (b).

²⁵ *Hugo Reforestation, Inc.*, ARB No. 99-003, ALJ No. 1997-SCA-020, slip op. at 9 (ARB Apr. 30, 2001).

²⁶ *Ray’s Lawn & Cleaning Svcs.*, ARB No. 06-112, slip op. at 4 (ARB Aug. 29, 2008); *see also Vigilantes, Inc. v. Adm’r of Wage & Hour Div., U.S. Dep’t of Labor*, 968 F.2d 1412, 1418 (1st Cir. 1992) (“The legislative history of the SCA makes clear that debarment of a contractor who violated the SCA should be the norm, not the exception, and only the most compelling of justifications should relieve a violating contractor from that sanction.”)

²⁷ 29 C.F.R. § 4.188(b)(1); *Hugo Reforestation*, slip op. at 12-13.

demonstrate the absence of a history of similar violations, an absence of repeat violations of the SCA, and that any previous violations were not serious.²⁸

If the contractor succeeds on the first part, the second part of the test requires that it demonstrate a good compliance history, cooperation in the investigation, repayment of the moneys due, and sufficient assurances of future compliance. If the contractor succeeds on the first and second parts, the third part lists other factors that must be considered, including whether the contractor has previously been investigated for SCA violations, whether the contractor has committed recordkeeping violations that impeded Wage and Hour's investigation, whether the determination of liability was dependent upon the resolution of a bona fide legal issue of doubtful certainty, the contractor's efforts to ensure compliance, and the nature, extent, and seriousness of any past or present violations.²⁹

2. The Respondents violated the SCA and the CWHSSA

The ALJ determined that the Respondents violated both the SCA and the Contract Work Hours and Safety Standards Act (CWHSSA). The record contains ample evidence that the Respondents violated the act. Employees on all four contracts and Wage and Hour investigators and supervisors testified that the Respondents had not paid the prevailing wages, health and welfare benefits, and holiday pay to its employees. The Respondents also failed to make deductions from SCA wages for taxes and other lawful deductions and failed to make and maintain payroll records.³⁰

The Respondents do not deny that the underpayments occurred, but instead contend that they were not required to comply with the Act's prevailing wage provisions. They contend that the individuals working on the four contracts were not entitled to SCA prevailing wages and fringe benefits because they were independent contractors, not employees. This argument is unavailing, however, because the relevant inquiry is whether the persons working on the contract come within the SCA definition of "service employee." The Act defines the term "service employee" as "any person engaged in the performance of a contract entered into by the United States [with certain exemptions not relevant here] . . . , the principal purpose of which is to furnish services in the United States; and shall include all such persons *regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.*"³¹

The regulations implementing the Act further explain the definition of "service employee" and the irrelevance of "contractual relationship" to that definition:

²⁸ 29 C.F.R. § 4.188(b)(3)(i).

²⁹ 29 C.F.R. § 4.188(b)(3)(ii).

³⁰ Tr. at 85, 88, 92-93, 96-99, 160-164, 176-177, 181-183, 276-277, 288-293, 486, 888-889.

³¹ 41 U.S.C.A. § 357(b) (emphasis added).

The Act, in section 8(b), makes it plain that the coverage of service employees depends on whether their work for the contractor or subcontractor on a covered contract is that of a service employee as defined in section 8(b) and *not on any contractual relationship that may be alleged to exist between the contractor or subcontractor and such persons*. In other words, any person, [with exceptions not relevant here], who performs work called for by a contract or that portion of a contract subject to the Act is, per se, a service employee. Thus, for example, *a person's status as an "owner-operator" or an "independent contractor" is immaterial in determining coverage under the Act* and all such persons performing the work of service employees must be compensated in accordance with the Act's requirements.^[32]

Thus, the plain language of the Act includes within its coverage all persons working in the performance of an SCA-covered contract, with certain limited exceptions. Here the culinary arts instructors, fitness instructors, recreational specialists, and test administrators all "perform[ed] work called for by a contract . . . subject to the Act" and each of them is accordingly "per se, a service employee."³³

The Respondents also attack the Administrator's calculation of back wages, contending that it was "fabricated."³⁴ They are apparently alluding to the investigators' reconstruction of the payroll records. This reconstruction, necessitated by the Respondents' failure to keep and maintain payroll records, was appropriate under the principles of the Supreme Court's decision in *Anderson v. Mt. Clemens Pottery Co.*³⁵ Where an employer's records are inaccurate or incomplete, the Administrator will not penalize the employees by denying them back wages simply because the precise amount of uncompensated work cannot be proved. The Supreme Court in *Mt. Clemens* provides specific guidance on the responsibilities of the trier of fact in such situations: "Unless the employer can provide accurate estimates [of hours worked], it is the duty of the trier of facts to draw whatever reasonable inferences can be drawn from the employees' evidence"³⁶

³² 29 C.F.R. § 4.155 (emphasis added).

³³ *Id.* See also *James R. Erbes d/b/a Sunnybrook Contractors*, No. 1984-SCA-109, slip op. at 3 (Sec'y July 17, 1991); *Mumbower v. Callicott*, 526 F.2d 1183, 1188 (8th Cir. 1975) (under the overtime provisions of the SCA, quoting *Mitchell v. Turner*, 286 F.2d 104, 106 (5th Cir. 1960)).

³⁴ Respondents' Brief at 12-13.

³⁵ 328 U.S. 680 (1946).

³⁶ 328 U.S. at 693; see also *United Kleenist Org. Corp.*, ARB No. 00-042, slip op. at 2-3 (Jan. 25, 2002); *Star Brite Constr. Co., Inc.*, ARB No. 98-113, slip op. at 5-6 (June 30, 2000).

The *Mt. Clemens* principles permit the award of back wages to non-testifying employees based on the representative testimony of a small number of employees.³⁷ Thus, the Administrator may rely on the testimony of representative employees to establish a pattern or practice of violations. Once a pattern or practice is established, the burden shifts to the employer to rebut the occurrence of violations or to show that particular employees do not fit within the pattern or practice. Thus, the employer must come forward with evidence of the precise amount of work performed or “with evidence to negate the reasonableness of the inference to be drawn from the employee’s evidence.”³⁸

Here the Respondents never provided payroll records to the Wage and Hour investigators and offered no payroll records at the hearing. But seven of the eighteen total employees on the contracts consistently testified about the hours for which they were not compensated and the fringe benefits that they did not receive. In addition, the investigators testified as to how they reconstructed the payroll records based on interviews with the employees. The ALJ properly credited the employees’ and investigators’ testimony. The burden then shifted to the Respondents to come forward either with evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inferences to be drawn from the Administrator’s evidence. The Respondents offered no probative evidence to rebut the reasonableness of the Administrator’s findings both as to the violations and the back wage calculations.

We also reject the Respondents’ argument that we should excuse them from failure to pay prevailing wages because of the contracting agencies’ excessive delays in making contract payments.³⁹ “The purpose of the Act is to protect the rightful wages of service employees. There is no provision in the statute or the regulations which permits an employer to wait until being reimbursed by another party before fulfilling its obligations to its employees.”⁴⁰

The Respondents, who were not represented by counsel in the ALJ proceedings, contend that the proceedings before the ALJ were unfair and biased.⁴¹ This argument has no merit. After review of both the hearing transcript and the ALJ’s decision, we find that the ALJ appropriately assisted this pro se litigant while maintaining his impartiality. A judge must refrain from

³⁷ 328 U.S. at 693.

³⁸ *Id.* at 687-688.

³⁹ Respondents’ Brief at 23.

⁴⁰ *Kleen-Rite Corp.*, BSCA No. 92-09, slip op. at 3 (Oct. 13, 1992).

⁴¹ Respondents’ Brief at 3-4, 15, 24-25.

becoming an advocate for the pro se litigant.⁴² While we have acknowledged that adjudicators must accord a party appearing pro se fair and equal treatment, a pro se litigant “cannot generally be permitted to shift the burden of litigating his case to the courts, nor avoid the risks of failure that attend his decision to forego expert assistance.”⁴³ Pro se litigants have the same burdens of proving the necessary elements of their cases as litigants represented by counsel.⁴⁴ The ALJ treated both parties with impartiality. Consequently, we reject the Respondents’ contention that the ALJ was biased toward the Administrator.

We therefore affirm the ALJ’s determination that the Respondents violated both the SCA and the CWHSSA by failing to pay required wages, overtime, fringe benefits, and holiday pay, and failing to keep proper records.

3. The Respondents do not meet Part 1 of the test for relief from debarment

The SCA’s debarment sanction applies to those persons or firms “found to have violated [the Act].”⁴⁵ Since the Respondents violated the SCA in underpaying service contract employees the wages and fringe benefits due them, the ALJ correctly concluded that they are subject to debarment.

As set forth above, unless the Respondents can meet the first part of the three-part test for relief from the sanction of debarment, they must be debarred. To meet part 1 of the test, they must prove that their conduct in causing or permitting SCA violations was not willful, deliberate, of an aggravated nature, or the result of culpable conduct. “Culpable conduct” includes “culpable neglect to ascertain whether practices” violate the Act, “culpable disregard of whether they were in violation or not, or culpable failure to comply with recordkeeping requirements.”⁴⁶ Culpable neglect is conduct “beyond negligence, but short of specific intent.”⁴⁷ The ALJ found that the Respondents were guilty of culpable neglect:

If there were only one contract involved, Respondents’ position might be more reasonable. But there were four contracts,

⁴² See, e.g., *United States v. Trapnell*, 512 F.2d 10, 12 (9th Cir. 1975) (per curiam) (“The trial judge is charged with the responsibility of conducting the trial as impartially and fairly as possible.”)

⁴³ *Ray’s Lawn*, slip op. at 7, quoting *Dozier v. Ford Motor Co.*, 707 F.2d 1189, 1194 (D.C. Cir. 1983).

⁴⁴ See *Young v. Schlumberger Oil Field Serv.*, ARB No. 00-075, ALJ No. 2000-STA-28, slip op. at 10 (ARB Feb. 28, 2003).

⁴⁵ 41 U.S.C.A. § 354(a).

⁴⁶ 29 C.F.R. § 4.188(b)(3)(i).

⁴⁷ *J & J Merrick’s Enters., Inc.*, BSCA No. 94-009, slip op. at 5 (Oct. 27, 1994).

overlapping each other in time. Respondents had to review the bid solicitation for each project and each one contained the pay requirements and references to the SCA and the wage determination. Igwe signed each of the contracts and the subsequent modifications, several of which changed the applicable wage determination. . . . Yet, Igwe apparently still failed to read or inquire as to the requirements of the SCA and the wage determinations contending that no one pointed these particulars out to him. Respondents are responsible for reading and complying with all provisions of the contracts and ignorance in the face of repeated notifications of the applicability of the SCA and the wage determinations is clearly culpable neglect.^[48]

Thus, the record demonstrates the Respondents' willful and deliberate disregard of whether they were complying with the Act's requirements regarding proper wage payment and recordkeeping. Relief under this first part of the test is also precluded "where a contractor has a history of similar violations, where a contractor has repeatedly violated the provisions of the Act, or where previous violations were serious in nature."⁴⁹ As the ALJ found, the Respondents ignored repeated instructions about compliance requirements from Wage and Hour Division officials during four different investigations where similar violations were reported. This evidence demonstrates culpable, indeed willful, conduct in causing the violations and relief from the three-year debarment sanction mandated by the Act.⁵⁰

The Respondents claim that they were not guilty of culpable neglect, but only guilty of ignorance of the SCA and its requirements. But because "[i]t is well established that the privilege of contracting with the government carries with it the responsibility to be aware of and follow the applicable contractual and legal provisions governing contractual performance," "[c]laims of ignorance by governmental contractors are . . . not generally regarded with favor."⁵¹ "[T]he obligation to comply with contractual requirements as well as the burden of obtaining the knowledge of how to comply rests, at all times, with the government contractor."⁵² The bid solicitations and contracts contained the clauses that the SCA required, and they referenced the applicable wage determinations. The Respondents also received revised wage determinations when the contracting agencies extended the contracts for option periods.⁵³ Like the ALJ, we find

⁴⁸ D. & O. at 29 (citations omitted).

⁴⁹ 29 C.F.R. § 4.188(b)(3)(i).

⁵⁰ 29 C.F.R. § 4.188(b)(3)(ii).

⁵¹ *Dantran, Inc.*, ARB No. 93-SCA-26, slip op. at 5 (June 10, 1997).

⁵² *Id.* at 6.

⁵³ AX at 12, 52, 82-84, 92, 277, 923, 927-929, 931-932, 946-948, 970-971, 999, 1007-1009; 1072-1073.

that “ignorance in the face of repeated notifications of the applicability of the SCA and the wage determinations is clearly culpable neglect.”⁵⁴

We conclude that the Respondents’ conduct in causing the SCA violations constitutes culpable conduct.⁵⁵ Therefore, like the ALJ, we conclude that the Respondents did not satisfy the first part of the three-part test for determining whether “unusual circumstances” exist to warrant relief from debarment. Thus, relief from the debarment sanction is not in order. Accordingly, we need not examine whether the Respondents met the second and third parts of the test.⁵⁶

CONCLUSION

The Respondents violated the SCA when they underpaid their employees SCA wages and fringe benefits due them under their federal contracts. A preponderance of the evidence supports the ALJ’s finding that the Respondents’ actions in causing the SCA violations amounted to culpable conduct. Therefore, “unusual circumstances” warranting relief from the debarment sanction do not exist. As a result, we **AFFIRM** the ALJ’s order that the Respondents shall not be awarded United States Government contracts for three years. As the Act provides, the Secretary will forward the Respondents’ names to the Comptroller General.⁵⁷

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER TRANSUE
Administrative Appeals Judge

⁵⁴ D. & O. at 29.

⁵⁵ 29 C.F.R. § 4.188(b)(3)(i).

⁵⁶ *Integrated Res. Mgmt., Inc.*, ARB 99-119, ALJ No. 1997-SCA-014, slip op. at 6 n.2 (ARB June 27, 2002) (The second prong of the three-part test for unusual circumstances should never be examined in the event that culpable conduct is a factor in the commission of the SCA violations. The third factor also may not be examined where aggravated circumstances or culpable disregard of obligations is demonstrated.).

⁵⁷ 41 U.S.C.A. § 354(a).