



In the Matter of:

**DAISY ABDUR-RAHMAN
and RYAN PETTY,**

**ARB CASE NOS. 12-038
12-057**

COMPLAINANTS,

**ALJ CASE NOS. 2006-WPC-002
2006-WPC-003**

v.

DATE: March 21, 2012

DEKALB COUNTY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER DISMISSING APPEALS

On January 17, 2012, a Department of Labor (DOL) Administrative Law Judge (ALJ) issued a Decision and Order on Damages on Remand in this case arising under the employee protection provisions of the Federal Water Pollution Control Act (FWPCA) and its implementing regulations.¹ The Secretary of Labor has delegated her authority to the Administrative Review Board to issue a final agency decision on appeal from the decision of a DOL ALJ.² To be timely, a petition for review of an ALJ's decision must be filed with the Board within ten business days of the date on which the ALJ issued it.³

¹ 33 U.S.C.A. § 1367 (Thomson/West 2006); 29 C.F.R. Part 24 (2011).

² 29 C.F.R. § 24.110 (2011). *See also* Secretary's Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010) (delegating to the ARB the Secretary's authority to review ALJ recommended decisions issued under, inter alia, the statutes listed in 29 C.F.R. Part 24.

³ 29 C.F.R. § 24.110(a).

Both the Complainants and the Respondent filed a petition for review of the ALJ's D. & O. within ten business days of the day on which the ALJ issued it. We assigned the Complainant's appeal ARB Docket Number 12-038, and we assigned the Respondent's appeal ALJ Docket Number 12-057. Ordinarily, the Board would then have thirty days from the date the Board received the petitions for review to determine whether it would review the ALJ's decision or permit it to become the final decision of the Secretary.⁴ But both parties also filed Motions for Reconsideration with the ALJ. The Board disfavors piecemeal appeals and does not consider an ALJ's decision to be ripe for review until the ALJ has resolved all timely motions for reconsideration.

On February 17, 2012, the ALJ issued a Decision and Order on Motion for Reconsideration. Because it was unclear how this Decision and Order might affect the Petitions for Review filed by the parties, the Board ordered the parties to inform the Board within ten business days of the date in which its Order was issued whether they wish to amend or withdraw the previously filed Petitions for Review. The briefing schedule was held in abeyance pending notification by the parties of their intentions.

Both parties responded to the Board's Order. The Respondent requested that the Board hold the Petitions for Review in abeyance pending the ALJ's order reconsidering interest.⁵ The Respondent further requested that once the ALJ issues an order on the reconsideration of interest, the Board give the parties ten days to complete and file their briefs on damages and interest.

The Complainants stated in their response (filed prior to the ALJ's latest decision denying the second motion for reconsideration) that they do not wish to presently withdraw or amend their outstanding Petitions for Review, but may do so after the ALJ issues a "'final' comprehensive recommended decision and order pertaining to damages and reinstatement issues" The Complainants also aver that "the parties are currently attempting to resolve between themselves issues regarding accrual of seniority and sick and annual leave time, and pension contribution and vesting issues all of which are subsumed within the issue of reinstatement of Complainants which [the ALJ] had previously ordered on October 19, 2011. While the parties may resolve some of these issues without further decision and order by [the ALJ], presently it appears that some outstanding issues will require administrative judicial resolution." Accordingly, the Complainants requested that the Board hold all outstanding Petitions for Review in abeyance pending resolution of these issues so that the Board may consider all damages- and reinstatement-related issues in a comprehensive manner.

⁴ *Id.*

⁵ Apparently after the ALJ issued his decision granting the motion for reconsideration, to which the parties both agreed, the Complainant decided that it had erred in agreeing and requested reconsideration of the ALJ's decision on reconsideration. The ALJ denied this motion by order issued on March 19, 2012.

Based on the Complainants' response, it appears that the ALJ has not yet issued a fully comprehensive decision in this case, nor is it evident from the parties' responses when such final decision resolving all the issues before the ALJ may be issued. Accordingly, we **DISMISS** the prematurely filed petitions for review of the parties, without prejudice. Once the parties obtain a final decision and order resolving all issues before the ALJ, the parties may file petitions for review, if necessary, of the ALJ's final decision as provided in 29 C.F.R. § 24.110(a).

FOR THE ADMINISTRATIVE REVIEW BOARD:

Janet R. Dunlop
General Counsel

**NOTE: Questions regarding any case pending before the Board should be directed to
the Board's Paralegal Specialists: Telephone: (202) 693-6200
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