

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

VINAY SAINI,

**ARB CASE NOS. 2024-0021
2024-0022**

COMPLAINANT,

**ALJ CASE NO. 2022-LCA-00015
ALJ JOHN M. HERKE**

v.

**HOSPITAL CARE CONSULTANTS,
INC.,**

DATE: February 16, 2024

RESPONDENT,

and

**ADMINISTRATOR, WAGE AND HOUR
DIVISION, U.S. DEPARTMENT OF
LABOR,**

PARTY-IN-INTEREST.

Appearances:

For the Complainant:

Vinay Saini; *pro se*; Royal Oak, Michigan

For the Respondent:

**John B. Brown, Esq., and Leigh N. Ganchan, Esq.; *Ogletree, Deakins,
Nash, Smoak & Stewart, P.C.*; Dallas, Texas and Houston, Texas**

**Before HARTHILL, Chief Administrative Appeals Judge, and ROLFE,
Administrative Appeals Judge**

ORDER OF REMAND

PER CURIAM:

This case arises under the H-1B visa program provisions of the

Immigration and Nationality Act, as amended.¹ On January 4, 2024, a United States Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order finding that Respondent Hospital Care Consultants, Inc. (Respondent) violated H-1B program requirements. The ALJ ordered various remedies in favor of Complainant Vinay Saini (Complainant), including attorney fees.

On January 13, 2024, Complainant filed a motion for reconsideration with the ALJ asking the ALJ to increase the attorney fee award and to award litigation costs. On February 1, 2024, the ALJ issued an Order Granting Motion for Reconsideration and Motion for Award of Attorney Fees and Costs (Reconsideration Order), modifying the attorney fee award and awarding litigation costs. On February 2, 2024, Complainant and Respondent each filed petitions for review with the Administrative Review Board (Board) seeking review of the ALJ's orders.²

On February 4, 2024, Complainant submitted an email to the ALJ noting a calculation error in the litigation costs that had been awarded in the Reconsideration Order. On February 6, 2024, the ALJ issued an Indicative Ruling Pursuant to 29 C.F.R. § 18.94 (Indicative Ruling). The ALJ observed that the matter had already been appealed to the Board and, as such, the ALJ lacked jurisdiction to issue further orders or rulings in the case. However, the ALJ stated that, pursuant to 29 C.F.R. § 18.94, if the Board were to remand the matter for reconsideration of the amount of litigation costs awarded to Complainant in the Reconsideration Order, the ALJ would amend the Order to correct the amount of litigation costs from \$1,401.57 to \$2,001.57.

Section 18.94 provides that “[i]f a timely motion is made for relief that the judge lacks authority to grant because a petition for review has been docketed and is pending, the judge may [state] that the judge would grant the motion if the reviewing body remands for that purpose.”³ The regulation also provides that “[t]he movant must promptly notify the clerk of the reviewing body if the judge states that he or she would grant the motion.”⁴

¹ 8 U.S.C. § 1101(a)(15)(H)(i)(b); 8 U.S.C. § 1182(n); 20 C.F.R. Part 655, subparts H and I (2023).

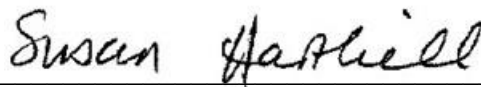
² The Board hereby gives notice of its acceptance of the petitions pursuant to 20 C.F.R. § 655.845(c).

³ 29 C.F.R. § 18.94(a).

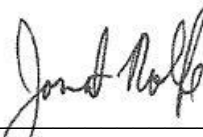
⁴ *Id.* § 18.94(b).

On February 7, 2024, Complainant filed a Notice Under 29 CFR § 18.94 on ALJ's Indicative Ruling, providing notice to the Board of the ALJ's Indicative Ruling and requesting that the Board remand the case to the ALJ to allow the ALJ to amend the Reconsideration Order. Upon consideration of the Indicative Ruling, we hereby **REMAND** this case to the ALJ to issue an order consistent with his Indicative Ruling. Upon the ALJ's issuance of an order on remand, the parties may petition the Board for review pursuant to 20 C.F.R. § 655.845.⁵

SO ORDERED.



SUSAN HARTHILL
Chief Administrative Appeals Judge



JONATHAN ROLFE
Administrative Appeals Judge

⁵ On February 10, 2024, Complainant filed a Motion for Order to Show Cause. That Motion is denied as moot.