U.S. Department of Labor

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

IN THE MATTER OF:

ADMINISTRATOR, WAGE & HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR,

PROSECUTING PARTY,

v.

JRW SERVICE GROUP, LLC, and JASON WINTERS,

RESPONDENTS.

ARB CASE NO. 2025-0001

ALJ CASE NO. 2021-DBA-00007
ALJ LYSTRA A. HARRIS

DATE: May 15, 2025

Appearances:

For the Complainant:
Seema Nanda, Esq., Jennifer S. Brand, Esq., Sarah K. Marcus, Esq., Jonathan T. Rees, Esq., Sarah J. Starrett, Esq.; *Office of the Solicitor, U.S. Department of Labor*; Washington, District of Columbia

For the Respondents:
Jason Winters; *Pro Se*; Downingtown, Pennsylvania

Before JOHNSON, Chief Administrative Appeals Judge, and KAPLAN and BURRELL, Administrative Appeals Judges

DECISION AND ORDER

BURRELL, Administrative Appeals Judge:

This case arises under the Davis-Bacon Act (DBA),[1] the Contract Work Hours and Safety Standards Act (CWHSSA),[2] and the applicable implementing

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[1] 40 U.S.C. § 3141-3148.

[2] 40 U.S.C. § 3701-3708.

regulations.[3] Respondents JRW Service Group, LLC, and Jason Winters (collectively, Respondents) appealed the June 7, 2024 Decision and Order (D. & O.) of a Department of Labor Administrative Law Judge (ALJ).[4] For the following reasons, we affirm the ALJ's decision.

The ALJ's initial decision was issued on June 7, 2024. Appeals of ALJ decisions under the DBA are to be filed with the Administrative Review Board (ARB) within 40 days of the date of the ALJ's decision.[5] The 40-day mark fell on July 17, 2024.

On July 16, 2024, the Administrator filed a Motion for Clarification with the ALJ. In the Motion, the Administrator identified four changes that she claimed were nonsubstantive. In response, ALJ Harris issued an Order to Show Cause on July 24, 2024, directing Respondents to show cause and demonstrate no later than August 6, 2024, why the Administrator's Motion to Clarify should not be granted. Respondents did not respond to the ALJ's Show Cause Order. Unopposed, the ALJ granted the Administrator's Motion to Clarify on August 19, 2024, and accepted the Administrator's proposed amendments to the decision.

As written, the Administrator's Motion and the ALJ's reissuance fall under Federal Rules of Civil Procedure Rule 60(a).[6] That Rule provides as follows:

> (a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.[7]

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3 29 C.F.R. Parts 5 and 6 (2019).

4 On August 19, 2024, the ALJ issued an Order Granting Administrator's Motion for Clarification of the Decision and Order (Clarification Order).

5 29 C.F.R. § 6.34.

6 FED. R. CIV. P. 60(a). ALJs apply the Federal Rules of Civil Procedure when the Department of Labor's rules do not adequately cover the issue at hand. 29 C.F.R. § 18.10(a) (2024).

7 FED. R. CIV. P. 60(a).

Clarifications under Rule 60(a) do not toll the original time cited above for a party to file an appeal.[8] Accordingly, Respondents were required to appeal the ALJ's decision within 40 days of the initial June 7 decision.[9]

On September 30, 2024, Respondents filed a Petition for Review. This Petition was filed more than 100 days past the ALJ's decision and is well beyond the 40 days for filing an appeal under the DBA regulations. The Petition for Review contains no explanation for the untimely filing.

On October 31, 2024, Respondents filed a supporting brief. Again, Respondents did not mention the ALJ's Clarification Order or explain the untimely filing of its petition for review.

On January 15, 2025, the Administrator filed a Response Brief identifying that the Petition for Review was untimely because it should have been filed within 40 days of the initial decision and asserting that Respondents' entire appeal of the ALJ's decision had been waived or forfeited. Respondents did not file a reply brief responding to the Administrator's arguments.

Roughly six months after filing a petition for review, Respondents raised the ALJ's Clarification Order in a Motion for Sanctions filed on March 27, 2025. In this filing, Respondents argue for the first time that their appeal was timely filed. The

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[8] *Hodge ex rel. Skiff v. Hodge*, 269 F.3d 155, 158 (2d Cir. 2001):

> Although this Court has never squarely addressed the question of whether a Rule 60(a) motion extends the time for filing postjudgment motions, those courts that have done so hold that it does not. Moreover, this Court (along with every other to have considered the matter) has held the analogous proposition that a motion under Rule 60(a) does not start anew the time for filing a notice of appeal. ("[W]hen a second judgment in a case does not differ from the first judgment in matters affecting the substantive rights of the parties, the time to appeal runs from the first judgment."). As the parties' respective rights and obligations have been finally and actually determined at the time of the initial judgment in both situations, a consistent rule is appropriate.

Id. (internal citations omitted).

[9] 29 C.F.R. § 6.34.

posture of Respondents' Motion for Sanctions is that the Administrator's proceeding with debarment in late summer or early fall of 2024, after no timely appeal of the ALJ's decision had been filed, was harmful to Respondents and warrants sanctions.

We decline to entertain sanctions against the Administrator. The Administrator had grounds for proceeding with the steps of debarment after the deadlines mentioned above had passed because Respondents had not provided any timely notice that these matters were in dispute. Respondents first put the Administrator on notice of an objection to the case on September 30, 2024, which was after the Administrator had already filed the debarment paperwork with the appropriate authorities (approximately 60 days after the time for filing had passed).

Further, because we deem Respondents' arguments on appeal forfeited, we affirm the ALJ's Order. Respondents' failure to object to the Administrator's Motion before the ALJ when requested and failure to raise the issue in its initial briefing to ARB warrants forfeiture of this issue on appeal.[10] We recognize that Respondents are not represented by counsel, and we give pro se pleadings some latitude. A pro se complainant will be held to less stringent standards than those applicable to lawyers.[11] Nonetheless, Respondents were required to argue objections to the Administrator's Motion below when the ALJ requested them to do so. Having failed to do so, the ALJ treated the Administrator's Motion as unopposed. Respondents' failure to respond to the ALJ's Show Cause Order deprived the ALJ and parties of the opportunity to fully argue the matter before the ALJ.[12] With few exceptions, appellate bodies are not an appropriate forum for a party to argue matters anew.

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[10] *Cf. United States v. Teague*, 443 F.3d 1310, 1314 (10th Cir. 2006) (discussing in the criminal law context the principle of forfeiture for failing to argue below). We make no finding of fact or conclusion of law as to whether the ALJ's August 19, 2024 Order accepting the proposed changes constitutes a clarification for purposes of FED. R. CIV. P. (60)(a).

[11] *Hasan v. Sargent & Lundy*, ARB No. 2005-0099, ALJ No. 2002-ERA-00032, slip op. at 4-6 (ARB Aug. 31, 2007).

[12] Likewise, Respondents failed to timely oppose the Administrator's argument on appeal, raised in the Response Brief, that the ALJ's August 19, 2024 Order accepting the proposed changes was a clarification for purposes of FED. R. CIV. P. (60)(a) and, thus, Respondents' Petition for Review was untimely. Respondents only belatedly attempted to address their untimeliness nearly 60 days after the Reply Brief was due, in the guise of the Motion for Sanctions.

Respondents have cited no grounds for us to overlook these failures and consider arguments first raised on appeal.[13]

CONCLUSION

The ALJ's decision is affirmed.

SO ORDERED.

RANDEL K. JOHNSON
Administrative Appeals Judge

ELLIOT M. KAPLAN
Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge

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[13] Further, while Respondents did cite case law in the March 27, 2025 Motion to support their argument that the ALJ's clarification issued on August 19, 2024, consisted of substantive changes and thereby restarted the clock to appeal, we have not been able to locate those decisions despite a thorough review of the relevant sources. In full, Respondents argue the following:

> Case law supports the principle that where an amended decision materially alters the substance of a prior ruling, the appeal period begins from the issuance of the amended decision. See *Beliveau v. U.S. Dep't of Lab.*, ARB No. 06-024, ALJ No. 2005-SOX-00009 (ARB July 31, 2008) (holding that a materially altered decision restarts the appeal period); *Barreiro v. Miami Airport Hotel*, ARB No. 1996-057 (ARB May 30, 1997) (acknowledging that significant changes in amended orders toll the appeal deadline). . . .

Respondents' March 27, 2025 Motion for Sanctions at 6. If these cases exist, there are significant errors in the citations. As written, this argument, too, may have been forfeited if it had been timely made.