



In the Matter of:

**Proposed debarment for
labor standards violated
by:**

ARB CASE NO. 2021-0028

ALJ CASE NO. 2017-DBA-00022

DEEPALI COMPANY, LLC,

DATE: September 20, 2021

Subcontractor,

and

**DHARMENDRAKUMAR HARMANBHAI
PATEL,**

an individual.

**With respect to laborers and mechanics
employed by DEEPALI COMPANY, LLC,
on a subcontract for Contract No. F13PC00229,
for construction of the Visitor Center for the
Detroit Wildlife Refuge in Trenton, Michigan**

Appearances:

For the Petitioners:

Dharmendrakumar H. Patel; *pro se*; Redford, Michigan

For the Administrator:

**Seema Nanda, Esq., Jennifer S. Brand, Esq., Sarah K. Marcus Esq.,
Jonathan T. Rees, Esq., Rebecca Azhdam Esq.; *U.S. Department of
Labor, Office of the Solicitor*; Washington, District of Columbia**

**Before: James D. McGinley, *Chief Administrative Appeals Judge*, Thomas
H. Burrell and Stephen M. Godek, *Administrative Appeals Judges***

DECISION AND ORDER

PER CURIAM. This case arises under the Davis-Bacon Act (DBA),¹ the Contract Work Hours and Safety Standards Act (CWHSSA),² and the applicable implementing regulations.³ On March 31, 2021, an Administrative Law Judge (ALJ) issued an order granting default judgment. Petitioners, Deepali Company, LLC (Deepali), and Dharmendrakumar Harmanbhai Patel (Patel), appealed to the Administrative Review Board (ARB or Board). For the following reasons, the Board summarily affirms the ALJ's order.

BACKGROUND

Mr. Patel is the sole owner of Deepali, a construction company. Deepali was a subcontractor on the construction site of a visitor center for the Detroit Wildlife Refuge in Trenton, Michigan. The Department of Labor's Wage and Hour Division (WHD) conducted an investigation and concluded that Petitioners violated the DBA and CWHSSA by disregarding labor standards with respect to Deepali's subcontract and second-tier subcontracts, failed to pay employees the full hourly rate, failed to pay required overtime compensation, did not submit certified payrolls, and misclassified workers as independent contractors.

On May 17, 2017, Petitioners requested a hearing before an ALJ with the Office of Administrative Law Judges. On May 16, 2018, the Administrator served Petitioners with discovery requests. Petitioners' responses were substantially deficient. The Administrator explained these deficiencies and requested that Petitioners supplement their answers and complete the outstanding requests. However, Petitioners failed to correct the deficiencies. The Administrator attempted several additional communications pertaining to the matter to no avail.

On December 19, 2018, the Administrator filed a motion to compel Petitioners to complete their discovery responses. The ALJ did not rule on that motion. The Administrator continued to attempt to resolve the discovery disputes. However, Petitioners remained uncooperative with regard to the discovery requests.

¹ 40 U.S.C. § 3141 et seq. (2013).

² 40 U.S.C. § 3701 et seq. (2018).

³ 29 C.F.R. Part 5 (2020).

The Administrator filed a second updated and renewed motion to compel on January 29, 2020. The ALJ granted the motion on March 17, 2020, and ordered Petitioners to provide the requested responses or otherwise show cause as to why default judgment should not be granted for continued discovery failures. Petitioners failed to comply with the order. On March 31, 2020, the ALJ entered an order of default judgment against Petitioners.

Petitioners filed a timely appeal with the Board. Both parties filed briefs.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated his authority to issue decisions under the DBA to the Board.⁴ The Board reviews the imposition of discovery sanctions under an abuse of discretion standard.⁵

DISCUSSION

On appeal, Petitioners contend the ALJ's order granting default judgment is not supported, and that the hearing process was unfair.⁶

ALJs have an inherent authority to “manage their own affairs so as to achieve the orderly and expeditious disposition of cases.”⁷ Failure to comply with a judge's order may result in sanctions, which includes dismissal of the proceeding.⁸

⁴ Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)), 85 Fed. Reg. 13186 (Mar. 6, 2020).

⁵ See *Saporito v. Fla. Power & Light Co.*, ARB No. 2009-0009, -0010, ALJ No. 2008-ERA-00014, slip op. at 2 (ARB Feb. 28, 2011); *Powers v. Pinnacle Airlines, Inc.*, ARB No. 2005-0022, ALJ No. 2004-AIR-00032, slip op. at 10 (ARB Jan. 31, 2006); *Mao v. Nasser*, ARB No. 2006-0121, ALJ No. 2005-LCA-00036, slip op. at 12 (ARB Nov. 26, 2008).

⁶ Petitioners make several additional arguments pertaining to the substantive merits of the DBA and CWHSSA violations. However, these are not at issue.

⁷ *Newport v. Fla. Power & Light, Co.*, ARB No. 2006-0110, ALJ No. 2005-ERA-00024, slip op. at 4 (ARB Feb. 29, 2008); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962); see also 29 C.F.R. § 18.12(b) (“[i]n all proceedings . . . the [ALJ] has all powers necessary to conduct fair and impartial proceedings”).

⁸ 29 C.F.R. § 18.57(b).

When determining whether dismissal is warranted, there are several factors an ALJ may consider, including:

(1) prejudice to the other party, (2) the amount of interference with the judicial process, (3) the culpability, willfulness, bad faith or fault of the litigant, (4) whether the party was warned in advance that dismissal of the action could be a sanction for failure to cooperate or noncompliance, and (5) whether the efficacy of lesser sanctions [was] considered.⁹

In entering a default judgment, the ALJ considered the factors listed above, and the procedural background supports his reasoning. From 2018 through 2020, the Administrator made repeated attempts to resolve the discovery dispute, including explaining to Petitioners why their responses were deficient.¹⁰ Despite these efforts, Petitioners failed to complete and/or supplement the Administrator's discovery requests. In addition, the Administrator filed two motions to compel, the second of which the ALJ granted.¹¹ In the order to compel, the ALJ provided Petitioners with an additional chance to respond to discovery requests and warned that failure to comply with the order could result in a default judgment.¹²

However, Petitioners remained uncooperative and did not respond to any of the outstanding discovery requests. Further, the ALJ considered Petitioners' failure to comply with the order to compel, and their continued failure to participate in discovery when he determined that default judgment was warranted.¹³

Therefore, we conclude that the ALJ did not abuse his discretion in entering a default judgment against Petitioners.

CONCLUSION

⁹ *Howick v. Campbell-Ewald Co.*, ARB No. 2004-0065, ALJ No. 2004-STA-00007, slip op. at 8 (Nov. 30, 2004) (citations omitted).

¹⁰ Order Granting Default Judgment (ALJ Mar. 31, 2021); the Administrator's Response in Opposition to "Defendant's Respond Motion to Compel" and Motion for Entry of Default Judgment (filed Apr. 20, 2020).

¹¹ Order Continuing Hearing and Granting Motion to Compel (ALJ Mar. 17, 2020).

¹² *Id.*

¹³ Order Granting Default Judgment (ALJ Mar. 31, 2020).

Accordingly, we summarily **AFFIRM** the ALJ's order granting default judgment.

SO ORDERED.