

U.S. Department of Labor Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

RACHEL HACKER,

ARB CASE NO. 2026-0032

PETITIONER,

DATE: May 29, 2026

Before BURRELL and KIKO, Administrative Appeals Judges

DECISION AND ORDER

On April 9, 2026, the Administrative Review Board (Board) received a letter from Petitioner Rachel Hacker in which she asserted that she was appealing a March 3, 2026 letter she received from the Portland District Office of the U.S. Department of Labor’s (DOL) Wage and Hour Division (WHD). The WHD letter conveyed to Petitioner that information she had submitted to the Portland District Office of WHD did not meet the requirements for acceptance as a complaint and that the Portland District Office declined to take further action “after careful consideration of [its] mission, priorities, and resources.” Petitioner’s letter to the Board indicates that Petitioner had provided information to the District Office that Whitepine Forestry, Inc. violated H-2B requirements, including the duty to recruit and hire available U.S. workers.

On April 23, 2026, the Board issued an Order to Show Cause in which it ordered Petitioner to file a written brief within fourteen calendar days explaining why the Board had the authority to hear the issues raised in Petitioner’s letter and why the matter was ripe for review. The Order to Show Cause stated that the Board may not have jurisdiction in this matter and explained that the Board’s jurisdiction

is limited to statutes and authorities delegated by the Secretary of Labor.¹ It also explained that in the H-2B context, the Board’s jurisdiction is limited to appeals in certain procedural postures, including reviewing Administrative Law Judge decisions in appeals of enforcement determinations made by the WHD.² The Board further warned Petitioner that failure to timely respond to the Order to Show Cause could result in the dismissal of this matter.

To date, Petitioner has failed to file a written brief as ordered in the Order to Show Cause. Without additional information or argument from Petitioner and in view of the regulations applicable to H-2B appeals, we conclude the Board lacks jurisdiction here. The H-2B regulations “prescribe the administrative appeal process that will be applied with respect to *a determination to assess civil money penalties, to debar, to enforce* provisions of the job order or provisions under 8 U.S.C. 1184(c), 20 CFR part 655, subpart A, or the regulations in this part, *or to the collection of monetary relief due as a result of any violation.*”³ The regulations further state that “[a]ny party desiring review of a *determination issued under § 503.41*, including judicial review, must make a request for such an administrative hearing in writing to the Chief ALJ at the address stated in the notice of determination”⁴ A reviewable determination issued under 29 C.F.R. § 503.41 is described as one which is reached “[w]henver the Administrator, WHD *decides to assess a civil money penalty, to debar, or to impose other appropriate administrative remedies*”⁵

¹ Order to Show Cause at 2 (citing Secretary’s Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13186 (Mar. 6, 2020); *Adm’r, Wage & Hour Div., U.S. Dep’t of Lab. v. Five M’s, LLC*, ARB No. 2019-0014, ALJ Nos. 2015-FLS-00010, -00011, slip op. at 14 (ARB Nov. 13, 2020) (“The Board was created by delegation from the Secretary of Labor and, therefore, has a limited and defined jurisdiction and scope of authority.”)).

² Order to Show Cause at 2 (citing 29 C.F.R. §§ 503.24, .51-.55).

³ 29 C.F.R. § 503.40(a) (emphasis added).

⁴ 29 C.F.R. § 503.43(a) (emphasis added).

⁵ 29 C.F.R. § 503.41(a) (emphasis added)

As there is no such determination from WHD here, this matter is not subject to the Board's review.⁶

CONCLUSION

For the foregoing reasons, we **DISMISS** this case.

SO ORDERED.

THOMAS H. BURRELL
Administrative Appeals Judge

PHILIP G. KIKO
Administrative Appeals Judge

⁶⁶ We have also previously noted that “an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.” *See Adm’r, Wage & Hour Div., U.S. Dep’t of Lab. v. Wash. Farm Lab. Ass’n*, ARB No. 2021-0069, ALJ No. 2018-TAE-00013, slip op. at 20-21 (ARB Mar. 31, 2023) (quoting *Heckler v. Chaney*, 470 U.S. 821, 831 (1985)) (remaining citations omitted).