

U.S. Department of Labor

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



IN THE MATTER OF:

**ADMINISTRATOR, WAGE
AND HOUR DIVISION, UNITED
STATES DEPARTMENT OF LABOR,**

ARB CASE NO. 2023-0021

DATE: March 27, 2023

PROSECUTING PARTY,

v.

KBR SERVICES, LLC,

RESPONDENT.

Appearances:

For the Administrator, Wage and Hour Division:

**Seema Nanda, Esq.; Jennifer S. Brand, Esq.; Jonathan T. Rees, Esq.;
and Judith Marblestone, Esq.; *U.S. Department of Labor, Office of the
Solicitor*; Washington, District of Columbia**

For the Respondent:

**Robert F. Spencer, Jr., Esq.; M. Rebecca Cooper, Esq.; and Matthew
J. Braquet, Esq.; *The Kullman Firm*; New Orleans, Louisiana**

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

ORDER DISMISSING PETITION FOR REVIEW WITHOUT PREJUDICE

PER CURIAM:

This case arises under the McNamara-O'Hara Service Contract Act of 1965 as amended (SCA)¹ and its applicable implementing regulations.² Respondent KBR

¹ 41 U.S.C. §§ 6701-6707.

² 29 C.F.R. Parts 4, 6, and 8 (2022).

Services, LLC (KBR Services) provides services to the United States Army in Goose Creek, South Carolina.³ On September 16, 2022, KBR Services requested a wage determination for Quality Control Inspectors (QCIs) from the United States Department of Labor, Wage and Hour Division (WHD).⁴ KBR Services initially sought to have the wage determination conformed to correspond to three tiers of QCIs, but later requested a division into two tiers.⁵ The first tier, QCI-Level 1, would inspect the work of six different classifications of workers at a proposed hourly rate of \$31.90.⁶ The second tier, QCI-Level 2, would inspect the same six classifications of workers plus four additional classifications at a proposed hourly rate of \$32.68.⁷

On November 16, 2022, the WHD Section Chief issued a determination letter in this matter that established a flat wage rate for all the inspectors.⁸ On December 7, 2022, KBR Services requested the WHD to reconsider its determination.⁹ On February 14, 2023, a WHD investigator emailed KBR Services stating that “[w]ith regards to the conformance prevailing wage amounts, the DOL gave you ample time to respond to what was provided and given deadlines. We received no timely response, the conformance stands.”¹⁰

On March 6, 2023, KBR Services filed a Petition for Review with the Administrative Review Board (Board) of the February 14, 2023 reconsideration denial.¹¹ KBR Services noted that it was not clear whether the correspondence it was appealing from represented “a final decision of the Administrator,” but that it was submitting the petition for review “out of an abundance of caution.”¹²

On March 15, 2023, the Board issued an Order to Show Cause, ordering the parties to show cause why the Board should not dismiss this appeal on grounds that it was not ripe for review because the WHD Administrator had not issued a final decision.¹³ On March 21, 2023, the parties filed a Joint Motion to Dismiss and

³ Petition for Review at 2.

⁴ *Id.* at 3.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 4.

⁸ Petition for Review at 4 and Exhibit E.

⁹ Petition for Review, Exhibit F.

¹⁰ Petition for Review, Exhibit A.

¹¹ Petition for Review at 1.

¹² *Id.* at 1 n.1.

¹³ Order to Show Cause at 2.

Response to Order to Show Cause requesting that the Board dismiss this appeal without prejudice because it is not ripe for review.¹⁴

The applicable regulations provide that:

The Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from final decisions of the Administrator of the Wage and Hour Division or authorized representative, and from decisions of Administrative Law Judges under subparts B, D, and E of part 6 of this title, arising under the Service Contract Act and the Contract Work Hours and Safety Standards where the contract is also subject to the Service Contract Act.^[15]

The parties assert that the February 14, 2023 WHD email was not a final decision of the WHD Administrator regarding KBR Services' request for reconsideration of WHD's November 16, 2022 conformance determination.¹⁶ Since the Administrator has not issued a final decision in this matter, the parties assert that the Board does not have jurisdiction to hear this appeal at this time.¹⁷

¹⁴ Joint Motion to Dismiss and Response to Order to Show Cause at 1.

¹⁵ 29 C.F.R. § 8.1(b).

¹⁶ Joint Motion to Dismiss and Response to Order to Show Cause at 2.


¹⁷ *Id.*

Without a final ruling from the WHD Administrator as provided in 29 C.F.R. § 8.1(b), the Board lacks jurisdiction to render a decision in this matter.¹⁸ Thus, this matter is not ripe for review. Accordingly, we **DISMISS** the Petition for Review without prejudice.

SO ORDERED.



SUSAN HARTHILL
Chief Administrative Appeals Judge



THOMAS H. BURRELL
Administrative Appeals Judge

¹⁸ See *Adm'r, Wage & Hour Div., U.S. Dep't of Lab. v. Kesco, Inc.*, ARB No. 2022-0031 (ARB July 13, 2022) (dismissing a petition for review without prejudice because WHD had not issued a final decision and the matter was not ripe for review); *Bramble, Inc.*, ARB Nos. 2014-0090, -0091 (ARB Dec. 17, 2014) (dismissing a petition for review where the petitioner failed to show cause as to why the case should not be dismissed because it failed to obtain a final decision from WHD); *Wicke*, ARB No. 2002-0062 (ARB May 21, 2002) (dismissing a petition for review without prejudice because WHD had not issued a final decision and the matter was not ripe for review); *Bradbury*, ARB No. 2001-0100 (ARB Nov. 9, 2001) (dismissing a petition for review without prejudice because a determination letter from WHD was not a final agency decision).