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

IN THE MATTER OF:

MARCUS FIELDS,

COMPLAINANT,

v.

SUPER EGO HOLDINGS,

RESPONDENT.

ARB CASE NO. 2025-0078

ALJ CASE NO. 2024-STA-00045
ALJ PAMELA A. KULTGEN

DATE: March 11, 2026

Appearances:

For the Complainant:
Marcus Fields; *Pro Se*; Greenville, Mississippi

***For the Respondent*:**
Seid Grebovic, Esq.; Super Ego Holdings; Elmhurst, Illinois

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

DECISION AND ORDER

This case arises from a complaint filed by Complainant Marcus Fields against Respondent Super Ego Holdings, alleging retaliation in violation of the whistleblower protections of the Surface Transportation Assistance Act of 1982 (STAA) and its implementing regulations.[1] After Respondent failed to comply with the ALJ's orders to submit a status report with a discovery plan and to furnish its initial disclosures, the Administrative Law Judge (ALJ) issued a Default Decision and Order against Respondent in which she ordered Respondent to reinstate Complainant to his former position and to pay Complainant backpay until the date

[1] 49 U.S.C. § 31105; 29 C.F.R. Part 1978 (2025).

of reinstatement. Applying the *Keller* factors, we conclude the ALJ acted within her discretion to enter default judgment against Respondent under 29 C.F.R. § 18.57(b)(1)(vi). We therefore affirm the ALJ's Default Decision and Order.

BACKGROUND

Complainant, who is self-represented, filed a complaint with the Occupational Safety and Health Administration (OSHA) on August 31, 2022, alleging that Respondent terminated him for complaining that management: assigned work that led to his driving over hours, reset electronic logging devices, did not provide insurance paperwork and vehicle tag registration for assigned CMVs, and declined to provide a hotel for Complainant while he was en route in hot weather.[2] After OSHA denied the complaint on January 3, 2024, Complainant filed objections and requested a hearing before the Office of Administrative Law Judges (OALJ).[3]

1. Notice of Assignment, Notice to Pro Se Complainant, and Scheduling Order

In a Notice of Docketing issued on February 8, 2024, the Chief ALJ directed the parties "to make initial disclosures within 21 days of the date of this notice without awaiting a discovery request or discovery order" per 29 C.F.R. § 18.50(c)(1).[4] The presiding ALJ then issued a Notice of Assignment, Notice to Pro Se Complainant, and Scheduling Order on March 20, 2024.[5] The order informed the parties that formal discovery was to begin, their initial disclosures were past due, and that attorneys were under a "continuing duty to confer about the scheduling of depositions and to meet and confer in good faith to resolve any discovery disputes."[6]

The ALJ also ordered both parties to, by May 10, 2024, file status reports with a discovery plan under 20 C.F.R. § 18.50(b)(3).[7] The status reports were to

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2 Complaint at 1-2.

3 January 3, 2024 OSHA Determination Letter; Order to Show Cause at 1.

4 Notice of Docketing at 2.

5 Notice of Assignment, Notice to Pro Se Complainant, and Scheduling Order (Scheduling Order).

6 Scheduling Order at 4.

7 *Id*. at 5.

include proposed hearing location information and hearing dates as well as proposed dates for closing discovery, submitting dispositive motions, exchanging hearing exhibits, and filing objections to proposed exhibits.[8]

2. The Parties' Email Communications with the ALJ's Attorney Advisor

As the parties had not submitted their status reports by the May 10, 2024 deadline, the ALJ's attorney advisor emailed the parties on May 16, 2024, and requested that the parties submit their status reports and attached a courtesy copy of the ALJ's March 20, 2024 order.[9] Respondent's attorney replied on May 17, 2024, that he had not consulted with Complainant, but that Respondent "would only be submitting dispositive motions because [Respondent] is not an employer," but a "leasing company."[10] He also asserted that the matter "was already dismissed by OSHA" and requested clarification as to next steps.[11]

That same day, the ALJ's attorney advisor explained by email that the next steps were outlined in the ALJ's March 20, 2024 scheduling order (which the attorney advisor again attached to the email as a courtesy) and reminded Respondent's counsel to provide Complainant with initial disclosures and to file its status report with the ALJ.[12]

After the parties again did not submit their status reports, the ALJ's attorney advisor emailed the parties on May 28, 2024, and inquired when they planned to do so.[13] The attorney advisor informed the parties that the ALJ "does not appreciate parties blatantly ignoring her orders" and that if the ALJ did not receive the parties' status reports, she would issue an Order to Show Cause requiring the parties to explain why sanctions were not to be imposed.[14]

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8 *Id*.

9 Order to Show Cause at 2; Default Decision and Order at 2 n.3.

10 Order to Show Cause at 2.

11 *Id*.

12 *Id*.

13 *Id*. at 2-3.

14 *Id*.

Respondent's attorney replied on May 30, 2024, that he had not been able to get in touch with Complainant.[15] He added, "I am not sure what else is there [sic] for me to do, we would only file a motion to dismiss because [Respondent] is not the employer, [Respondent] does not have employees."[16] The attorney advisor replied to Respondent's attorney that day that his obligation to file a status report was a "routine procedural matter" that remained regardless of any defenses Respondent could raise in a motion to dismiss and the lack of contact with Complainant.[17] The parties were advised that if their status reports were not submitted by June 7, 2024, the ALJ would issue an Order to Show Cause.[18]

3. Order to Show Cause

In response, Complainant filed a status report on June 6, 2024.[19] Respondent did not file its status report by the June 7, 2024 deadline, and the ALJ issued an Order to Show Cause on June 10, 2024. The ALJ ordered Respondent's attorney to "no later than June 24, 2024, show cause why sanctions should not be imposed for failing to comply with my March 20, 2024 order to file a status report [as required by 29 C.F.R. § 18.50(b)] and for failing to provide initial disclosures as required by 29 C.F.R. § 18.50(c)."[20] She specifically warned that "[f]ailure to timely respond may result in a default decision and order against Respondent" per 29 C.F.R. § 18.57(b)(1).[21]

4. Default Decision and Order

Despite the ALJ's warning of the potential for a default judgment, Respondent filed not a single response to the ALJ's Order to Show Cause.[22] In a Default Decision and Order dated June 27, 2024, the ALJ found Respondent had

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15 *Id*. at 3. Complainant explained in a reply to the attorney advisor that had he had been "going through legal issues." *Id*.

16 *Id*.

17 *Id*.

18 *Id*.

19 *Id*. at 3-4.

20 *Id*. at 5.

21 *Id*.

22 Default Decision and Order at 1.

failed to provide its status report pursuant to 29 C.F.R. § 18.50(b)(3) and had reason to conclude that Respondent had also failed to provide the initial disclosures to Complainant.[23] The ALJ noted she had warned Respondent of the possibility of a default decision and order.[24] She then evaluated the efficacy of each of the lesser sanctions provided at 29 C.F.R. 18.57(b)(1) and explained her reasons for not imposing them as an alternative to default judgment.[25]

Her analysis of the efficacy of prohibiting Respondent from supporting its defenses or introducing matters in evidence per 29 C.F.R. 18.57(b)(1)(ii) or striking its defenses under 29 C.F.R. 18.57(b)(1)(iii), evaluated Respondent's attorney's assertion that Respondent's status as a "leasing company" rendered it not an "employer" under the STAA.[26] She noted this contention "lack[ed] merit on its face"[27] on the basis that the applicable definition of an "employer" who is subject to the STAA includes "a person engaged in a business affecting commerce" that "leases a commercial motor vehicle."[28] The ALJ thus concluded that striking or prohibiting Respondent from supporting its defense that the STAA was inapplicable to it as a leasing company "would likely be ineffective or unreasonably delay the case."[29]

The ALJ also evaluated whether striking or precluding Respondent from supporting or introducing evidence related to other possible defenses to Complainant's STAA claim would serve as an effective sanction.[30] She found that "[i]f Respondent's counsel cannot do rather simple litigation tasks, like file a status report with a discovery plan or provide initial disclosures, there is no reason to believe he will discharge his more-challenging obligations, such as participating in discovery or presenting a case at trial. Even if I set this matter for hearing to allow Complainant to present his case, I have no confidence Respondent's counsel would appear."[31]

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23 *Id*. at 2-3.

24 *Id*. at 3.

25 *Id*. at 3-6.

26 *Id*. at 4-5.

27 *Id*. at 5.

28 *Id*. at 4 n.4.

29 *Id*. at 4.

30 *Id*. at 5.

31 *Id*.

The ALJ concluded that imposing the sanctions of staying further proceedings until Respondent obeyed her orders or dismissing the proceeding in whole or in part pursuant to 29 C.F.R. § 18.57(b)(1)(iv) and 29 C.F.R. § 18.57(b)(1)(v), respectively, would harm Complainant and "only reward Respondent's malfeasance."[32]

The ALJ assessed the willful nature of Respondent's attorney's conduct, finding he intentionally flouted her March 20, 2024 scheduling order and June 10, 2024 Order to Show Cause to submit his status report.[33] She found that the attorney's replies to her attorney advisor's four emails informing the attorney of his obligation to file his status report demonstrated he "received and knew about my orders and understood my expectations."[34] She thus determined that "Respondent has demonstrated willful disobedience to my orders, despite being given numerous opportunities to comply. Respondent's actions can be interpreted only as bad faith or fault on its own part."[35]

As a result, the ALJ entered a default decision and order against Respondent.[36] She adopted the allegations in the complaint as "true and correct," and found that under the STAA: Respondent was a covered entity; Complainant was an employee of Respondent and had engaged in protected activity; Complainant's protected activity was a contributing factor in Respondent's decision to discharge him on August 29, 2022; Respondent had not demonstrated by clear and convincing evidence it would have discharged Complainant in the absence of his protected activity; Complainant earned $1,700 per week while employed by Respondent; and, Respondent had not proven Complainant failed to mitigate his damages.[37]

The ALJ ordered Respondent to take "affirmative action to abate the violation," reinstate Complainant to his former position with the same pay, terms, and privileges of employment, and to pay Complainant backpay of $1,700 per week

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32 *Id*. at 6.

33 *Id*. at 7-9.

34 *Id*. at 7.

35 *Id*. at 9.

36 *Id*. at 9-10.

37 *Id*.

beginning from August 30, 2022 "to the present and continuing until the date of reinstatement," plus interest.[38]

Respondent asserts the ALJ abused her discretion in issuing the Default Decision and Order on the basis that: 1) The record did not establish its willful non-compliance but "case management slippage;"[39] 2) The ALJ improperly relied on Respondent's "email statements about coverage to infer bad faith;"[40] 3) Lesser, adequate sanctions were available to the ALJ under 29 C.F.R. § 18.57(b)(1)(i)-(vi);[41] 4) The decision "improperly resolved core merits without an evidentiary record;"[42] and, 5) OSHA's findings in denying the complaint "confirm that the merits are genuinely disputed and require record-based adjudication."[43] These arguments are unpersuasive and do not alter our conclusion that the ALJ acted within her discretion to reach default judgment.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the ARB to hear appeals from ALJ decisions and issue agency decisions in cases arising under the STAA.[44] The Board reviews ALJ determinations on procedural issues, evidentiary rulings, and sanctions for an abuse of discretion.[45] ALJs abuse their discretion when they: (1) base their decision on an error of law or use the wrong legal standard; (2) base their decision on a clearly erroneous factual finding; or (3) reach a conclusion that, though not necessarily the product of a legal error or of a clearly erroneous factual finding, cannot be located within the range of permissible decisions.[46]

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38 *Id.* at 10.

39 Opening Brief of Respondent Super Ego Holdings (Resp. Br.) at 4.

40 *Id.*

41 *Id.*

42 *Id.*

43 *Id.*

44 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).

45 *Butler v. Anadarko Petroleum Corp.*, ARB No. 2012-0041, ALJ No. 2009-SOX-00001, slip op. at 2 (ARB June 15, 2012) (citations omitted).

46 *Xia v. Lina T. Ramey & Assoc., Inc.*, ARB No. 2023-0046, ALJ No. 2022-LCA-00013, slip op. at 7-8 (ARB Oct. 7, 2024) (citation omitted).

DISCUSSION

Pursuant to the inherent power that ALJ's possess to manage the orderly and expeditious disposition of their cases[47] and the OALJ Rules of Practice and Procedure, ALJs may impose default judgment as a sanction for a party's non-compliance with an ALJ's discovery orders.[48] While all case-ending sanctions are reviewed for an abuse of discretion,[49] such sanctions "deserve[ ] closer scrutiny within the abuse-of-discretion framework."[50] ALJs "must exercise this power cautiously . . . and should take care in fashioning sanctions for conduct that abuses the judicial process."[51] Applying the factor analysis described in *Keller v. Pittsburgh*

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47 *Newport v. Fla. Power & Light Co.,* ARB No. 2006-0110, ALJ No. 2005-ERA-00024, slip op. at 4 (ARB Feb. 29, 2008); *see also Jenkins v. EPA,* ARB No. 2015-0046, ALJ No. 2011-CAA-00003, slip op. at 8 (ARB Mar. 1, 2018) (citations omitted); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (citing *Link v. Wabash R. Co.,* 370 U.S. 626, 630-31 (1962)); *id.* at 50 ("[W]hen there is bad-faith conduct in the course of litigation that could be adequately sanctioned under the Rules, the court ordinarily should rely on the Rules rather than the inherent power. But if in the informed discretion of the court, neither the statute nor the Rules are up to the task, the court may safely rely on its inherent power.").

48 An ALJ may mete out any of the sanctions outlined at 29 C.F.R. 18.57(b)(1), including default judgment, due to a party's failure to obey an order to provide or permit discovery. 29 C.F.R. § 18.57(b)(1)(vi) ("If a party . . . fails to obey an order to provide or permit discovery, including an order under § 18.50(b) . . . the judge may issue further just orders. They may include . . . [r]endering a default decision and order against the disobedient party."); *id.* § 18.50(b)(1) ("The judge may order the parties to confer on the matters described in paragraphs (b)(2) and (3) of this section."); *id.* § 18.50(b)(2) ("In conferring, the parties must . . . develop a proposed discovery plan . . . ."). The OALJ Rules also provide that ALJs may "take any appropriate action authorized by the [Federal Rules of Civil Procedure]" in exercising "all powers necessary to conduct fair and impartial proceedings . . . ." *Id.* § 18.12(b)(10).

49 *Keller v. Pittsburgh Baptist Church*, ARB No. 2025-0008, ALJ No. 2023-TAX-00012, slip op. at 8 (ARB July 30, 2025) (citation omitted).

50 *Adm'r, Wage & Hour Div., U.S. Dep't of Lab. v. Glob. Horizons Manpower, Inc.,* ARB No. 2009-0016, ALJ No. 2008-TAE-00003, slip op. at 11 (ARB Dec. 21, 2010); *see also Jenkins,* ARB No. 2015-0046, slip op. at 10 (citation omitted) ("[W]here a lower court's order of dismissal or default as a discovery sanction is under review, the review is more thorough because the drastic sanction deprives a party completely of its day in court.") (citation and quotation marks omitted).

51 *Pfeifer v. AM Retail Grp., Inc.,* ARB No. 2023-0009, ALJ No. 2021-SOX-00030, slip op. at 3-4 (ARB Mar. 22, 2023) (citing *Newport,* ARB No. 2006-0110, slip op. at 4).

Baptist Church, we conclude that the ALJ did not abuse her discretion in rendering the Default Decision and Order in this matter. [52]

1. The ALJ's Default Decision and Order Was Not the Result of an Abuse of Discretion

A. Willfulness, Bad Faith, or Fault

We see no error in the ALJ's factual finding that Respondent's failure to comply with the ALJ's orders was due to culpability, willfulness, or bad faith.[53] She accurately concluded that each of Respondent's attorney's replies to her attorney advisor's emails evinced his awareness of the requirements of her March 20, 2024 order and that in the absence of a showing he was unable to comply with that order, his non-compliance was intentional.[54]

Further, in lieu of describing any difficulty Respondent had with complying with the order, Respondent's attorney elected to instead posit that it is not an "employer" under the STAA.[55] Although a meritorious defense does not excuse non-compliance with ALJ orders, the Respondent's attorney failed to show that

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[52] *See Keller,* ARB No. 2025-0008, slip op. at 8-10 (the discretionary factors set forth in *Keller* include: "(1) the culpability, willfulness, or bad faith of the non-compliant party (culpability/willfulness/bad faith); (2) whether the non-compliant party was warned their conduct or failure to comply could result in dismissal or default judgment (warning); (3) the efficacy of less drastic sanctions (lesser sanctions); (4) whether the party failed to comply with an order (non-compliance); (5) whether the non-compliant party engaged in dilatory conduct (dilatory conduct); (6) whether and to what extent there was prejudice to the opposing party (prejudice); and, (7) interference with the judicial process (judicial process).").

[53] *See* Default Decision and Order at 7-9; *Keller,* ARB No. 2025-0008, slip op. at 10 ("Of these factors, the first of culpability, willfulness, or bad faith must be met prior to a case's dismissal with prejudice or the issuance of a default judgment for a party's failure to comply with a discovery order, given the universality of that requirement.") (citations omitted).

[54] Default Decision and Order at 7-9; *see O'Reilly v. Indus. Automation, Inc.*, ARB No. 2025-0024, ALJ No. 2023-CAA-00004, slip op. at 7 (ARB Sept. 29, 2025) ("'unwillingness to meaningfully participate in the resolution of [the] case'" in failing to comply with discovery orders evidenced willfulness); *see also Roland v. Salem Contract Carriers*, 811 F.2d 1175, 1180 (7th Cir. 1987) (". . . we find that the plaintiffs' noncompliance with [ ] order at the time they became aware of its existence provides an independent ground for imposing the sanction of dismissal under Rule 37(b).").

[55] Order to Show Cause at 2-3.

Respondent actually had such a defense.[56] He did not clarify how, as simply a "leasing company" without more, Respondent was not subject to the STAA's employee protection provisions when the statute's implementing regulations define an "employer" as "a person engaged in a business affecting commerce that owns or *leases* a commercial motor vehicle in connection with that business, or assigns an employee to operate the vehicle in commerce . . . ."[57] We thus see no reason to conclude that Respondent had in fact put forward a meritorious defense.

Nonetheless, Respondent's attorney continued to ignore the ALJ's order to file a status report in spite of the attorney advisor's instruction that a dispute on the merits did not eliminate Respondent's obligation to comply.[58] Respondent reinforced the willful nature of its non-compliance when it completely ignored the ALJ's Order to Show Cause.[59]

Moreover, Respondent remains obdurate in its arguments before the Board. Its brief is bereft of any explanation as to why Respondent disregarded the ALJ's March 20, 2024 order and June 10, 2024 Order to Show Cause despite the latter order's dire warning of the potential for a default decision and order.[60] We thus see no reason to reverse the ALJ's determination that Respondent's defiance of her orders was intentional and willful.[61]

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56 *Id.*

57 *Id.*; 29 C.F.R. § 1978.101(i) (emphasis added).

58 Order to Show Cause at 3.

59 Default Decision and Order at 3; *see Novelty, Inc. v. Mountain View Mktg., Inc.,* 265 F.R.D. 370, 381 (S.D. Ind. 2009) (Party's "refusal to comply with the Court's [ ] Order . . . reflects its willfulness, bad faith, and 'fault'. Its refusal, continuing even to this date, warrants the imposition of sanctions under Rule 37."); *see also id.* at 382 ("'evidence of foot-dragging or [of] a cavalier attitude towards following court orders and the discovery rules' warrants strong action by the Court.") (quoting *Ritacca v. Abbott Labs.,* 203 F.R.D. 332, 335 (N.D. Ill. 2001)).

60 Resp. Br. at 1-7.

61 *See Wehrs v. Wells*, 688 F.3d 886, 890 (7th Cir. 2012) ("In order to have a default judgment vacated, the moving party must demonstrate: '(1) good cause for the default; (2) quick action to correct it; and (3) a meritorious defense to the complaint' . . . . A meritorious defense . . . must at least 'raise[ ] a serious question regarding the propriety of a default judgment and . . . [be] supported by a developed legal and factual basis.'") (citations omitted).

B. Lesser Sanctions

The Default and Decision and Order in this matter more than amply evaluated the futility of each of the lesser sanctions outlined at 29 C.F.R. § 18.57(b)(1)(i)-(vi).[62] The ALJ's thorough explanation for her conclusion that each lesser sanction was inappropriate or would fail to induce Respondent's compliance with the most basic processes in this case contains no error.[63] Nor was the ALJ obliged to impose any of the lesser sanctions prior to rendering default judgment.[64]

Upon closer scrutiny under the abuse of discretion standard of review, the ALJ's decision is supported by the *Keller* factors met or assessed here—the culpability, willfulness, or bad faith of Respondent, the clear warning it received of the potential of a default judgment, the inefficaciousness of a lesser sanction, and Respondent's failure to comply with the ALJ's orders.[65] Accordingly, our review indicates the ALJ did not abuse her discretion in sanctioning Respondent with default judgment for its discovery noncompliance.

2. Motion to Stay

As noted above, the ALJ ordered Respondent to reinstate Complainant, among other relief. Although Respondent appealed the ALJ's decision to the Board, the applicable regulations provide that an ALJ's order of reinstatement remains effective while the ARB considers the appeal, unless the ARB grants a motion by the respondent to stay that order based on "exceptional circumstances."[66] Therefore, Respondent remained obligated to reinstate Complainant.

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62 Default Decision and Order at 3-6.

63 *Id*.

64 *See U.S. v. DiMucci*, 879 F.2d 1488, 1493 (7th Cir 1989) ("We have, however, declined to adopt a rule that the imposition of less drastic sanctions is an absolute prerequisite to the entry of a default judgment") (citation omitted); *see also Hal Commodity Cycles Mgmt. Co. v. Kirsh,* 825 F.2d 1136, 1139 (7th Cir. 1987) ("A district court is not required to fire a warning shot . . . [and] must have the default judgment readily available within its arsenal of sanctions in order to ensure that litigants who are vigorously pursuing their cases are not hindered by those who are not.") (citation and internal quotation marks omitted).

65 *See Keller,* ARB No. 2025-0008, slip op at 9-10.

66 29 C.F.R. § 1978.110(b).

By January 2026—approximately 19 months after the ALJ ordered Respondent to reinstate Complainant and six months after Respondent filed its appeal with the ARB—Respondent had still not offered to reinstate Complainant. Consequently, on January 22, 2026, Complainant filed a Request for Status and Enforcement Guidance with the Board stating that he had not been reinstated.[67]

Subsequently, on February 12, 2026, Respondent filed a Motion to Stay Reinstatement Pending Review (Motion to Stay), asking the Board, for the first time, to stay the ALJ's order of reinstatement pending its review of this appeal. In support of its request, Respondent repeated its argument, as touched on above, that it did not employ Complainant and thus could not reinstate him. Respondent's Motion to Stay was largely conclusory and did not offer or cite any evidence in support of Respondent's assertions. Complainant opposed the Motion to Stay.

Respondent failed to comply with its obligation to reinstate Complainant, but Respondent's Motion to Stay is rendered moot by virtue of our decision above. It is therefore unnecessary for the Board to address it.

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[67] The Board issued a Response to Request for Status and Enforcement Guidance on February 11, 2026, confirming that Respondent was obligated to reinstate Complainant and directing Complainant to the statutory and regulatory enforcement provisions.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the ALJ's Default Decision and Order.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge

PHILIP G. KIKO
Administrative Appeals Judge