U.S. Department of Labor

Office of Administrative Law Judges
Heritage Plaza Bldg. - Suite 530
111 Veterans Memorial Blvd
Metairie, LA 70005

(504) 589-6201
(504) 589-6268 (FAX)

Issue Date: 29 December 2003

CASE NO: 2004-LCA-9

IN THE MATTER OF

MARK J. WATSON
Complainant

v.

ELECTRIC DATA SYSTEMS CORPORATION
Respondent

SUMMARY DECISION DENYING CLAIMANT'S REQUEST FOR HEARING

This proceeding arises under the Immigration and Nationality Act, as amended by the Immigration Act of 1990 and 1991, 8 U.S.C. §§ 1101(a)(15)(H)(i)(b), 1182(n) and 1184(c) (hereinafter "the Act"), and the regulations promulgated thereunder at 20 C.F.R. Part 655, Subparts H and I.

Background

1.

Mark Watson (Complainant), filed a form claim for relief (marked Exhibit A and attached) with the U. S. Department of Labor against Electronic Data Systems Corporation (Respondent) alleging violations of 20 C.F.R. § 655.738(b) and 739(f), (g), (h) and (j).

2.

On December 3, 2003, the Administrator issued a two page letter (marked Exhibit B and attached) which in pertinent part set forth the following:

> . . . the information in your letter does not provide evidence indicating that a violation of the H-1B requirements has occurred. Therefore, we are not able to do the investigation you request. If you have evidence that Electronic Data Systems is H-1B dependent, please contact me again.

3.

Prior to the issuance of the Administrator's determination, Complainant filed an "Original Request for Hearing" with the Office of Administrative Law Judges (marked Exhibit C and attached).

4.

Following a December 15, 2003, telephone conference with the parties,[1], Complainant was allowed to amend his hearing request by adding the Administrator's December 3, letter. Complainant filed his amendment (marked Exhibit D and attached) and was then granted 10 days to show cause why his request for hearing should not be dismissed pursuant to 20 C.F.R. § 655.805(d)(2) which states "no hearing pursuant to this subsection shall be available where the Administrator determines that an investigation on a complaint is not warranted."

5.

Complainant has now filed his response to the December 15, 2003, show cause order (marked Exhibit E and attached) by alleging that the Administrator's determination was in error, that reasonable cause did exist to investigate his claim, that he is entitled to judicial review and that the burden of proof rests with the Respondent.

Discussion and Findings

20 C.F.R. § 655.206(b) provides jurisdiction to the Office of Administrative Law Judges in two circumstances: (1) where the Administrator, after investigation, determines there is no basis for a finding an employer committed a violation and (2) where the Administrator, after investigation, determines that employer has committed a violation. However, according to the plain language of 20 C.F.R.

[1] Complainant was pro se and Respondent was represented by counsel.

§655.805(d)(2), no hearing shall be available where the Administrator determines that an investigation of a complaint is not warranted.

In this instance there is no material issue of fact regarding the procedural history of this claim. Nor is there any issue that the Administrator determined that an investigation of Complainant's complaint was not warranted. Therefore, it is my finding that the Office of Administrative Law Judges has no jurisdiction to provide Complainant with a hearing and his request for hearing is hereby summarily **DENIED.**

So ORDERED this 29th day of December, 2003, at Metairie, Louisiana.

A

C. RICHARD AVERY
Administrative Law Judge

CRA:kw

NOTICE OF APPEAL RIGHTS: This decision shall become the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.110, unless a petition for review is timely filed with the Administrative Review Board ("Board"), US Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210, and within 30 days of the filing of the petition, the ARB issues an order notifying the parties that the case has been accepted for review. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b), as found OSHA, Procedures for the Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002; Interim Rule, 68 Fed. Reg. 31860 (May 29, 2003).