



**In the Matter of:**

**FORREST M. SANDERS,**

**ARB CASE NO. 04-058**

**PETITIONER,**

**DATE: June 28, 2004**

**v.**

**ADMINISTRATOR,  
WAGE AND HOUR DIVISION,  
U.S. DEPARTMENT OF LABOR,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Petitioner:*

*Forrest Sanders, pro se, Billings, Montana*

*For the Respondent:*

*Douglas Davidson, Esq., Steven Mandel, Esq., U.S. Department of Labor,  
Washington, D.C.*

## **FINAL DECISION AND ORDER**

### **BACKGROUND**

Asphalt Supply and Services, Inc. employed the Petitioner, Forrest Sanders, in December 2000 to operate a front end loader for a crusher operation pursuant to a contract "for a public works highway on the Crow Indian Reservation." Sanders alleges that he was not paid the proper wage rate under the Davis-Bacon Act, 40 U.S.C.A. § 3141 *et. seq.* (West Supp. 2003) (DBA or the Act). In order to correct the alleged wage problem, Sanders contacted area officials for the Department of Labor and the Bureau of Indian Affairs contracting division. After looking into his objections, the agents notified Sanders that his request for wage correction had been forwarded to the Wage and Hour Division in Washington, D.C. Sanders claims that the Administrator, subsequently, denied his request, but did not provide him with any written documentation of the

decision. *See* Petition for Review at 1. Sanders has petitioned the Administrative Review Board to review the denial of his requested correction.

The Administrative Review Board has jurisdiction to review final decisions of the Administrator pursuant to 29 C.F.R. § 7.1(b) (2003). *See also* Sec’y Order 1-2002, 67 Fed. Reg. 69272 (Oct. 17, 2002). However, Sanders’s petition for review failed to demonstrate that the Administrator had rendered a final decision regarding his complaint. On March 9, 2004, the Board issued an Order to Show Cause instructing Sanders to explain why the petition should not be dismissed because the Board lacks jurisdiction to consider it in the absence of a final decision by the Administrator. The Board, in the Order to Show Cause, instructed Sanders that he needed to either produce a copy of the Administrator’s final order or show why the petition should not be dismissed for failure to comply with 29 C.F.R. § 7.1(b). On March 23, 2004, Sanders filed a Motion for Extension of Time to Answer Order to Show Cause so that he could collect the documentation that the Board requested. On March 24, 2004, the Board granted this motion and extended the deadline to show cause to April 20, 2004. In his response to the Board’s Order to Show Cause, Sanders concedes that he cannot produce the final decision of the Administrator. Petitioner’s Answer to Show Cause and Reply to Defendant’s Motion to Dismiss at 3. Consequently, Sanders asks the Board to consider his appeal *sua sponte* or order that the Administrator decide his claim in a timely manner. Replying to Sanders’s response, the Administrator asks the Board to dismiss the petition for review and allow her to take appropriate action on Sanders’s claim after she considers all relevant facts and circumstances.

## DISCUSSION

Sanders first requests the Board to make a decision on the merits of his complaint *sua sponte*. In the Order to Show Cause, the Board made clear that under the Davis-Bacon Act it has the authority to “hear and decide in its discretion appeals concerning questions of law and fact from the **final** decisions under [29 C.F.R. part 1].” 29 C.F.R. § 7.1(b) (emphasis supplied). *Accord South Florida Carpenters Regional Council*, ARB No. 02-069 (Sept. 25, 2002); *Gary J. Wicke*, ARB No. 02-062 (May 21, 2002). Sanders concedes that he is unable to produce any evidence that the Administrator issued a final decision. Moreover, Sanders has not provided the Board any legal authority that indicates that the Board has the authority to review a claim filed under the Davis-Bacon Act in the absence of a final decision by the Administrator. Consequently, the Board finds no persuasive reason to conclude that it has the authority to exercise jurisdiction over this matter without a final order by the Administrator, as required by 29 C.F.R. § 7.1(b). Therefore, the petition for review is **DENIED**.

Second, Sanders asks this Board to order the Administrator to reach a final decision on his complaint in a timely manner. Again, Sanders fails to explain how, in the

absence of a final decision by the Administrator, the Board has jurisdiction to issue such an order. Therefore, the request to order the Administrator to determine the matter in a timely fashion is **DENIED**.

**SO ORDERED.**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**