



**In the Matter of:**

**VOGEL D. NEWSOME,**

**ARB CASE NO. 04-082**

**COMPLAINANT,**

**DATE: September 14, 2004**

**v.**

**MITCHELL, MCNUTT & SAMS, P.A.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearance:**

***For the Complainant:***

***Vogel D. Newsome, pro se, Jackson, Mississippi***

**FINAL DECISION AND ORDER**

**BACKGROUND**

This case arises from a complaint filed by the Complainant, Vogel Newsome, against the Respondent, Mitchell, McNutt & Sams, P.A., for unpaid wages pursuant to the Fair Labor Standards Act (FLSA), 29 U.S.C.A. § 201 (West 1998). On March 19, 2004, the District Director of the Jackson, Mississippi office of the Department of Labor Wage and Hour Division issued a letter to the Complainant, notifying her that he found no violation of the FLSA and that the Wage and Hour Division would take no further action. On April 16, 2004, the Administrative Review Board (ARB) received a petition for review from the Complainant requesting the ARB to review the Wage and Hour Division's determination.

Because it did not appear from the face of the petition for review that the ARB had jurisdiction of the matter, the ARB ordered the Complainant to show cause why her petition for review should not be dismissed for lack of jurisdiction. The ARB explained,

“To show cause, the Complainant must demonstrate how her petition for review falls under this Board’s jurisdiction to review decisions made by the Administrator of the Wage and Hour Division (or an authorized agent of the Administrator) under Section 4 of the Secretary’s delegation of authority to the ARB.”<sup>1</sup>

The Complainant filed a response to the Show Cause Order on July 7, 2004. For the following reasons we conclude that the ARB does not have jurisdiction to consider Newsome’s petition for review.

## DISCUSSION

The Secretary of Labor established the ARB to issue final decisions for the Secretary in cases arising under a limited number of specified statutory provisions. Secretary’s Order 1-2002, 67 Fed. Reg. 64272 (Oct. 17, 2002). Accordingly, the ARB’s jurisdiction to issue such decisions is limited to the statutory provisions specifically enumerated. In this case, Newsome appeals a decision issued by the Department of Labor’s Wage and Hour Division. The Secretary of Labor has delegated authority to the ARB to review final decisions of the Administrator of the Wage and Hour Division or an approved agent of the Administrator<sup>2</sup> under:

(1) The Davis-Bacon Act, as amended (40 U.S.C. 276a et seq.); any laws now existing or which may be subsequently enacted, providing for prevailing wages determined by the Secretary of Labor in accordance with or pursuant to the Davis-Bacon Act; the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) (except matters pertaining to safety); the Copeland Act (40 U.S.C. 276c); Reorganization Plan No. 14 of 1950; and 29 CFR parts 1, 3, 5, 6, subpart C and D.

b. Final decisions of the Administrator of the Wage and Hour Division or an authorized representative of the Administrator, and from decisions of ALJ, arising under the McNamara-O’Hara Service Contract Act, as amended (41 U.S.C. 351); the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) (except matters

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<sup>1</sup> See Secretary’s Order 1-2002, Delegation of Authority and Assignment of Responsibility to the Administrative Review Board, 67 Fed. Reg. 64272 (Oct. 17, 2002).

<sup>2</sup> The Administrator of the Wage and Hour Division did not sign the letter of which Newsome seeks review, nor does the letter purport to be a final decision of the Administrator. Given our conclusion that the ARB does not have jurisdiction of this case in any event, it is not necessary for us to determine whether the letter was a final decision by an authorized agent of the Administrator.

pertaining to safety) where the contract is also subject to the McNamara-O'Hara Service Contract Act; and 29 CFR parts 4, 5, 6, subparts B, D, E.

Secretary's Order 1-2002, 67 Fed. Reg. 64272 (Oct. 17, 2002). Thus, the Secretary has delegated to the Board the jurisdiction to review final decisions of the Administrator of the Wage and Hour Division only in cases arising under the statutes specified and these specified statutes do not include the FLSA.

In support of her argument that the ARB has jurisdiction of her appeal, Newsome contends that the ARB's statement in the Order to Show Cause that its jurisdiction is limited to those statutes enumerated in the Secretary's Delegation of Authority is belied by information posted on the ARB's website that states, "the Secretary delegated directly to the Administrative Review Board the authority of the Secretary of Labor and other deciding officials to issue final agency decisions under a broad range of Federal labor laws." Response to Show Cause (Resp.) at 4. The two statements are not contradictory. The variety of the subject matters of the statutes under which the ARB issues decisions for the Secretary is indeed quite broad, including, for example, environmental, airline, nuclear energy, trucking and airline whistleblower protections, federal contracts for construction and services, child labor protection, migrant and seasonal worker protection and H-1B non-immigrant employee protections. However, the Board's jurisdiction is in fact "limited," in that the Board may only issue decisions for the Secretary as specified in the Secretary's delegation of authority to the Board.<sup>3</sup>

Newsome also argues that Section 4(c)(10)-(13) of the Secretary's Order delegates to the Board authority to review decisions in cases arising under specified sections of the FLSA and its regulations. However, even if Newsome's claim fell within these enumerated sections and regulations, Section 4(c)'s delegation to the Board is limited to review of "[d]ecisions and recommended decisions by ALJs" in such cases. Newsome has petitioned for review of the letter of a Wage and Hour District Director, not from the decision of an ALJ. Therefore Section 4(c)(10)-(13) does not delegate authority to the Board to review the District Director's letter as requested by Newsome.

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<sup>3</sup> Newsome notes that the Board neglected to include a copy of the Secretary's Order of delegation with the Show Cause Order. The Board apologizes for any inconvenience caused by this omission and the necessity for Newsome to obtain a copy from the Department of Labor's website.

## CONCLUSION

In response to the Board's Show Cause Order, Newsome has failed to demonstrate, nor is the Board cognizant of, any basis for asserting jurisdiction in this case. Consequently, we **DISMISS** the petition for review.<sup>4</sup>

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

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

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<sup>4</sup> In the event that the ARB determined that it did not have jurisdiction in this case, Newsome has requested us to forward her petition to the Secretary of Labor for her consideration. A copy of the petition will be so forwarded.