



DATE: February 17, 1998

CASE NO.: 98-LCA-4

*In the Matter of:*

**ADMINISTRATOR, WAGE AND HOUR DIVISION,**  
Prosecuting Party,

v.

**ALLIED INFORMATICS, INC.,**  
Respondent.

**ORDER TO SHOW CAUSE**

The Administrator, Wage and Hour Division of the United States Department of Labor (the "Administrator") issued a determination on January 30, 1998, finding that Allied Informatics, Inc. ("Respondent"), misrepresented a material fact on its labor condition application and willfully failed to pay the required wage to its H1-B nonimmigrant worker. In response thereto, in a letter dated February 11, 1998, Respondent requested a hearing in this matter which arises under the Immigration Nationality Act ("INA"), 8 U.S.C. §§1101(a)(15)(H)(i)(b), 1182(n), 1184 and 29 U.S.C. 49 *et seq.* and the implementing regulations found at 29 C.F.R. Part 655, subpart H and I. Thereafter, by letter dated February 12, 1998, Respondent requested that its Request of Hearing be withdrawn "without prejudice in its entirety."

Because neither the regulations found at 20 C.F.R. §655,<sup>1</sup> nor the Rules of Practice found at Part 18<sup>2</sup> discuss the procedures governing dismissal of actions, Federal Rule of Civil Procedure, Rule 41 which discusses voluntary dismissals and the effects thereof, shall be applied. *Compare Rainey v. Wayne State University*, 90-ERA-40 (Sec'y Jan. 7, 1991) (applying Rule 41 to ERA whistleblower complaints). Rule 41 provides that:

---

<sup>1</sup> 20 C.F.R. §655.825(a) provides that "[e]xcept as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the 'Rules of Practice and Procedure' . . . established by the Secretary at 29 C.F.R. part 18 shall apply."

<sup>2</sup> 29 C.F.R. §18.1(e) provides that the Federal Rules of Civil Procedure ("FRCP") "shall be applied in any situation not provided for or controlled by these rules, or by any statute, executive order or regulation."

(a) . . . an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgement, whichever first occurs[.] . . . Unless otherwise stated in the notice of dismissal[,] . . . the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claims.

(b) Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. . . .

I find that Rule 41(a) applies<sup>3</sup> because Respondents filing of a request for a hearing in this matter does not trigger a need for an answer from the Administrator, and because a motion for summary judgment has not been filed by the Administrator or its counsel. Accordingly, the Administrator is hereby **ORDERED** to Show Cause why this matter should not be dismissed without prejudice. The Administrator's response must be received by this Office and opposing counsel on or before the close of business on Monday, February 23, 1998. If no response is received from the Administrator on or before said date, the matter will be dismissed without prejudice.

**SO ORDERED.**

**JOHN M. VITTON**  
Chief Administrative Law Judge

JMV/jlh

---

<sup>3</sup> Although Rule 41 uses the term plaintiff, I find that respondent in an enforcement action like the one at bench is substantially similar to a plaintiff in a civil action, such that this Rule may apply. The plaintiff in a civil action is the person who decides to challenge a matter in court, much like Respondent herein decided to challenge the Administrator's determination and seek review of it before this Court.