



**In the Matter of:**

**ADMINISTRATOR WAGE AND  
HOUR DIVISION,**

**ARB CASE NO. 05-085**

**PROSECUTING PARTY**

**ALJ CASE NO. 2004-LCA-0021**

**v.**

**DATE: November 28, 2008**

**PEGASUS CONSULTING GROUP, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For Respondent:***

**Roy D. Ruggiero, Esq., *Earp Cohn P.C.*, Cherry Hill, New Jersey**

***For Administrator, Wage and Hour Division:***

**Roger W. Wilkinson, Esq., Paul L. Frieden, Esq., William C. Lesser, Esq.,  
Steven J. Mandel, Esq., Gregory F. Jacob, Esq., *U.S. Department of Labor*,  
Washington, D.C.**

**FINAL ORDER OF DISMISSAL**

By petition received by the Administrative Review Board on April 11, 2005, Pegasus Consulting Group requested the Board to review the Decision and Order (D. & O.) of Department of Labor Administrative Law Judge (ALJ) in this case arising under the Immigration and Nationality Act (INA), as amended, 8 U.S.C.A. §§ 1101(a)(15)(H)(i)(b), 1182(n), 1184(c) (West 1999). The Board has jurisdiction to review an ALJ's decision concerning the INA.<sup>1</sup> Pursuant to 20 C.F.R. § 655.845 (2004), the Board gave notice on April 14, 2005 of its intention to review the ALJ's D. & O. and, as provided in 20 C.F.R. § 655.845(e), specified the following issues, which Pegasus raised in its appeal, to be reviewed:

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<sup>1</sup> 8 U.S.C.A. § 1182(n)(2) and 20 C.F.R. § 655.845 (2008). *See also* Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002) (delegating to the ARB the Secretary's authority to review cases arising under, inter alia, the INA).

- 1) Whether the ALJ properly found that Pegasus failed to consummate a bona fide termination of the employment of the H-1B employee, Rajnarayanan Krishnamoorthy, in May 1999 and thus violated the INA by failing to pay wages during a period of employment identified in Krishnamoorthy's labor condition application;
- 2) If so, did the ALJ properly calculate the wages that Pegasus owes Krishnamoorthy;
- 3) Whether the ALJ properly found that Pegasus improperly withheld Krishnamoorthy's wages for the month of July 2000 because Pegasus concluded that under the terms of his employment agreement, Krishnamoorthy failed to give it adequate notice of his intention to leave the company.<sup>2</sup>

On November 21, 2005, the Board issued an Order Holding Briefing Schedule in Abeyance until the United States District Court for the District of New Jersey issued its decision in *Pegasus Consulting Group v. ARB*, No. 05-5161. The court issued its decision in March 31, 2008. Moreover, the limitations period for filing a timely notice of appeal to the United States Court of Appeals for the Third Circuit expired on May 30, 2008 and neither party notified the Board that an appeal was filed.

Thus, on July 9, 2008, the Board issued an Order Establishing Briefing Schedule in ARB Case No. 05-085, under the terms of which Pegasus was to file its initial brief on or before August 11, 2008. Pegasus failed to file an initial brief in response to the Board's order. Accordingly, on September 17, 2008, the Board issued an Order requiring Pegasus to show cause no later than September 26, 2008, why the Board should not dismiss its appeal because it failed to file a brief in accordance with the Board's briefing order of July 9, 2008. But the Board has no record of receiving a response to this Order. Nevertheless, believing that a response to the show cause order may have been received by the Board, but was misplaced, the Board requested by letter dated November 5, 2008 that Pegasus file a second copy of its response, if any, with the Board and indicate the date on which it was originally filed. Moreover, the Board stated that if the Board does not receive Pegasus's response by November 14, 2008, the Board may proceed to dismiss Pegasus's appeal without further notice.

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<sup>2</sup> By petition also received by the Board on April 11, 2005, the Administrator cross-appealed the ALJ's D. & O.. See ARB Case No. 05-086. Pursuant to the Board's notice on April 14, 2005, the Board specified the additional issue, which the Administrator raised in his appeal, to be reviewed as whether the ALJ properly rejected the Administrator's assessment of a civil money penalty on the grounds that the Administrator failed to establish that Pegasus's INA violations were willful. The disposition of this issue is not before the Board in the instant case, ARB Case No. 05-085.

Pegasus has not responded. Thus, Pegasus’s failure to file an initial brief or to respond to the Board’s order to show cause why the Board should not dismiss its appeal because it failed to file a brief constitutes a failure to prosecute its case.<sup>3</sup> The Board’s authority to effectively manage its affairs, including the authority to require compliance with Board briefing orders, is necessary to “achieve orderly and expeditious disposition of cases.”<sup>4</sup> This Board has authority to issue sanctions, including dismissal, for a party’s failure to comply with the Board’s orders and briefing requirements.<sup>5</sup> Accordingly, we **DISMISS** Pegasus’s appeal because it has declined to prosecute it before the Board.

**SO ORDERED.**

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

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

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<sup>3</sup> Courts “possess the ‘inherent power’ to dismiss a case for lack of prosecution.” *Solnicka v. Washington Pub. Power Supply Sys.*, ARB No. 00- 009, ALJ No. 1999-ERA-019, slip op. at 3 (ARB Apr. 25, 2000); *Reid v. Niagara Mohawk Power Corp.*, ARB No. 03-039, ALJ No. 2002-ERA-003, slip op. at 4 (ARB Dec. 16, 2003) (dismissing case for failing to file initial brief).

<sup>4</sup> *Link v. Wabash*, 370 U.S. 626, 630-31 (1962).

<sup>5</sup> *See Blodgett v. TVEC*, ARB No. 03-043, ALJ No. 2003-CAA-007 (ARB March 19, 2003) (dismissing complaint for failure to comply with briefing order); *cf.* Fed. R. App. P. 31(c) (allowing dismissal as sanction for failure to file a conforming brief); Fed. R. App. P. 41(b) (permitting courts to dismiss a complaint for failure to comply with court orders).