



**Issue Date: 14 January 2005**

Case No.: 2004-MSP-4

In the Matter of:

DAVID MICHAEL CONNERY  
201 Smith Sawyer Road  
Cave Junction, OR 97523,  
Respondent.

**DECISION AND ORDER GRANTING  
SUMMARY JUDGMENT FOR PLAINTIFF  
AND AFFIRMING DECISION OF THE SECRETARY**

This proceeding arises under the Migrant and Seasonal Agricultural Worker Protection Act (“Act”), 29 U.S.C. § 1801, *et. seq.*, and the regulations enacted thereunder at 29 C.F.R. Part 500.<sup>1</sup> A Notice of Docketing and Prehearing Order was originally issued in this matter on July 6, 2004. An Order Granting a Motion for Stay of Proceeding was thereafter issued by Associate Chief Administrative Law Judge Thomas M. Burke on November 9, 2004, and the case was subsequently assigned to me for disposition. The U.S. Department of Labor (“the Department,” “DOL,” or “Plaintiff”) sought to stay this proceeding pending a ruling on its Motion for Summary Judgment filed on June 17, 2004. No response to the motion has been received from Respondent,<sup>2</sup> and, the time for filing a response having expired, the matter is now ripe for disposition.

**Procedural History**

On September 26, 2003, the Department notified Respondent, David Mitchell Connery, that it had refused his application for a Farm Labor Contractor Employee’s Certificate of Registration. Respondent thereafter filed a timely exception to DOL’s determination on October 5, 2003.

On June 17, 2004, this Office received an Order of Reference and a Motion for Summary Judgment from the Deputy Associate Solicitor of the Fair Labor Standards Division of DOL. In support of its Motion for Summary Judgment, Plaintiff alleged that on April 22, 2001, Respondent plead guilty to, and was convicted by the United States District Court for the District

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<sup>1</sup> Unless otherwise specified, all regulatory citations noted herein are found in Title 29, Code of Federal Regulations (“C.F.R.”).

<sup>2</sup> On September 7, 2004, Respondent submitted a witness list with certain attachments in response to the Notice of Hearing and Prehearing Order issued by Associate Chief Judge Burke. The attached documents included, *inter alia*, statements by Respondent’s probation officer and employer and will be considered by me as Respondent’s opposition to the Department’s Motion for Summary Judgment.

of Oregon of, a felony involving knowingly and intentionally manufacturing psilocybin mushrooms.<sup>3</sup> Citing Respondent's felony conviction, DOL denied Respondent's application for a certificate of registration pursuant to § 1813(a)(5)(B) of the Act which authorizes the Secretary of the Department of Labor ("Secretary") to refuse to issue a certificate of registration to any person who has been convicted within the preceding five years under State or Federal law of any felony involving, among other things, manufacturing narcotics. DOL further alleged that it complied with all applicable procedural requirements in refusing to issue Respondent a certificate.

Respondent argues that DOL erred by refusing to issue a certificate, and has submitted letters from his probation officer and his employer praising his character and attitude. Respondent has also offered certificates signifying his completion of various driver training programs.

### **Discussion**

Any person who desires to engage in any activity as a farm labor contractor, as defined by the Act and regulations, must first obtain a Certificate of Registration authorizing him or her to do so. § 500.40. Anyone who is an employee of a registered farm labor contractor working solely on behalf of that contractor, must obtain a Farm Labor Contractor Employee Certificate of Registration authorizing his or her activities. *Ibid.* An application by an individual seeking either certificate must be completed on the appropriate form, subscribed and sworn to by the applicant, and filed in the appropriate State Employment Service Office or any office of the Wage and Hour Division of the Department of Labor. §§ 500.44 through 500.47. The Secretary may refuse to issue a certificate if the applicant has, *inter alia*, been convicted within the preceding five years of any felony under State or Federal law involving a violation of narcotics laws. 29 U.S.C. § 1813(a)(5)(B); § 500.51(f)(2). Written notification of the Secretary's determination to refuse an application must be given to the applicant. § 500.210(a). The notice of determination must set forth the reason or reasons for the determination by the Secretary, the right to request a hearing on the determination, the time and method for requesting a hearing, and that the failure to file a timely request for hearing will result in the determination becoming final and unappealable. § 500.211(a)-(e).

Upon receipt of a timely request for a hearing, the Secretary must file an authenticated copy of the notice of administrative determination complained of and a copy of the request for hearing with OALJ and serve copies of the notice of determination and request for hearing on the person requesting the hearing. § 500.224(a), (c). Unless otherwise provided, the Rules of Practice and Procedures for Administrative Hearings before the Office of Administrative Law Judges ("OALJ") at Part 18 apply to such hearings. § 500.219. Any decision by an Administrative Law Judge must, *inter alia*, include an appropriate order affirming, denying,

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<sup>3</sup> DOL attached to its Motion a copy of the following documents: Respondent's application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration; a judgment against Respondent dated April 22, 2001 issued by the U.S. District Court for the District of Oregon; a certified letter dated September 26, 2003 to Respondent notifying him of DOL's determination to refuse to issue a Farm Labor Contractor Employee Certificate of Registration; a letter dated October 5, 2003 from Respondent to DOL requesting a hearing on the Secretary's determination; and a letter dated October 30, 2003 to Respondent from DOL acknowledging his request for a hearing.

reversing, or modifying, in whole or in part, the determination of the Secretary, and a statement of the reason or reasons therefor. §500.262(e).

The Rules of Practice and Procedure provide, in relevant part, that an “Administrative Law Judge may enter summary judgment . . . if pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.” § 18.40. Section 1813(a)(5)(B) of the Act clearly gives the Secretary discretion to refuse to issue a certificate of registration if an applicant has been convicted of any felony under State or Federal law involving, among other things, narcotics. 29 U.S.C. § 1813(a)(5)(B); § 500.51(f)(2).

It is undisputed that: Respondent filed a proper application on July 10, 2003 seeking the issuance of a Farm Labor Contractor Employee Certificate of Registration; the Secretary thereafter refused to grant the application and properly notified Respondent of that decision; Respondent subsequently filed a timely request for hearing; and this matter was then referred to OALJ by Plaintiff for the hearing requested by Respondent. It is also undisputed that on April 22, 2001, Respondent plead guilty to, and was convicted of, a felony involving narcotics in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C). Respondent has not alleged, nor does the record demonstrate, any procedural violations in DOL’s refusal to issue a certificate. The Secretary’s actions were clearly within the discretion authorized by 29 U.S.C. § 1813. Even when Respondent’s case is viewed in the most favorable light, Respondent has failed to demonstrate a genuine issue as to any material fact. Plaintiff is therefore entitled to summary judgment.

### **Order**

Based on the foregoing, the Department’s Motion for Summary Judgment is hereby GRANTED and the decision of the Secretary refusing to issue a Farm Labor Contractor Employee Certificate of Registration to Respondent is AFFIRMED.

**A**

STEPHEN L. PURCELL  
Administrative Law Judge

Washington, D.C.

**NOTICE OF APPELLATE RIGHTS:** Within twenty (20) days after the date of this decision, the respondent, the Administrator, or any other party desiring review thereof, may file with the Secretary an original and two copies of a petition for issuance of a Notice of Intent to Modify or Vacate a Decision and Order, as described under 29 C.F.R. § 500.265. Any such petition must be submitted to:

Secretary of Labor  
U.S. Department of Labor  
Washington, DC 20210

The petition must be in writing and contain a concise and plain statement specifying the grounds on which review is sought. A copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition. Copies of the petition must also be served upon all other parties