



In the Matter of:

**UNITED STATES DEPARTMENT OF
THE INTERIOR, NATIONAL PARK
SERVICE, DENALI NATIONAL PARK
AND PRESERVE.**

ARB CASE NO. 04-177

DATE: February 28, 2006

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Petitioner:

***Molly N. Ross, Assistant Solicitor, United States Department of the Interior,
Washington, D.C.***

For Respondent Administrator, Wage and Hour Division:

***Ford F. Newman, Esq., Steven J. Mandel, Esq., Howard M. Radzely, Esq.,
United States Department of Labor, Washington, D.C.***

FINAL DECISION AND ORDER

BACKGROUND

On September 24, 2004, Paul R. Anderson, Superintendent, Denali National Park and Preserve, requested sixty additional days to submit a petition for review of a decision of the Acting Administrator of the Wage and Hour Division of the United States Department of Labor's Employment Standards Administration under the McNamara-O'Hara Service Contract Act (SCA).¹ The Administrative Review Board granted this request by order issued on September 17, 2004. Pursuant to the order, the Department of Interior was required to file its petition for review on or before November 12, 2004.

The Interior Department did not file its petition for review as ordered. Consequently, we ordered it to show cause on or before January 18, 2006, why the Board

¹ 41 U.S.C.A. § 353(c) (West 1987).

should not issue an order closing this case because it failed to timely file a petition for review. The Show Cause Order provided that the Acting Administrator of the Wage and Hour Division could file a response on or before February 1, 2006. The Interior Department failed to timely respond to the Show Cause Order.

On February 1, 2006, the Acting Administrator filed a Status Report. The Acting Administrator averred that the Interior Department had not served him with a response to the Board's Show Cause Order. The report further stated:

This matter is currently under reconsideration by the Acting Administrator and therefore, not ripe for the Board's review. See 29 C.F.R. 8.1(b).² Consequently, the above-captioned case should be dismissed without prejudice. The United States Department of Interior, or any other interested party, may file a petition for review once the Acting Administrator issues a decision on reconsideration.³

On February 1, 2006, the Interior Department filed an untimely response to the Show Cause Order. The response neither explained the failure to timely file a petition for review nor a timely response to the Show Cause Order. Instead the Interior Department stated:

On May 11, 2005, the Department of the Interior requested the Deputy Administrator, Department of Labor, to reconsider his July 13, 2004, ruling regarding Concession Contract No CC-DENA001-03 at Denali National Park and Preserve. The Deputy Administrator has not yet responded to this request. Consequently, on behalf of the Department of the Interior, National Park Service, this office requests an extension of time to respond to the Order to Show Cause

² This regulation provides in pertinent part:

(b) The Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from final decisions of the Administrator of the Wage and Hour Division or authorized representative, and from decisions of Administrative Law Judges under subparts B, D, and E of part 6 of this title, arising under the Service Contract Act and the Contract Work Hours and Safety Standards Act where the contract is also subject to the Service Contract Act.

29 C.F.R. § 8.1(b)(2005).

³ Status Report at 2.

until 30 days after the Deputy Administrator responds to the pending request for reconsideration.^[4]

DISCUSSION

The Secretary of Labor has delegated her authority to the Administrative Review Board to issue final decisions under the SCA upon appeal of final decisions of the Administrator of the Wage and Hour Division and Department of Labor Administrative Law Judges.⁵ The Acting Administrator states that he has not yet made a final decision in this case.⁶ Accordingly, the Board does not have authority to hear an appeal in this case.⁷ Therefore, we **DENY** the Department of Interior's Request for an Extension of Time and we **CLOSE** this case.⁸

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

⁴ Response to Order to Show Cause and Request for Extension of Time.

⁵ Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64272 (Oct. 17, 2002). *See also* 29 C.F.R. § 8.1.

⁶ Status Report at 2.

⁷ *United Gov't Security Officers, Local # 50*, ARB No. 05-157 (Dec. 29, 2005).

⁸ The Interior Department has filed untimely and inadequate responses to the Board's orders in this case. The Interior Department should be aware that should it again petition the Board to review an order of the Administrator, its failure to timely file a petition for review, brief or response to a Board order may result in dismissal of its appeal. *Cook v. United States Env'tl. Protection Agency*, ARB No. 06-036, ALJ No. 2005-CER-1 (ARB Feb. 22, 2006); *Reid v. Constellation Energy Group*, ARB No. 04-107, ALJ No. 2004-ERA-8 (ARB Dec. 17, 2004); *Anderson v. United States Env'tl. Protection Agency*, ARB No. 04-072, ALJ No. 2004-ERA-15 (ARB June 10, 2004).