



In the Matter of:

**ANDREW AIKEN and
all other Similarly Affected Employees
of ITS Medical Systems on U.S. Army
Reserve Command Contract No.
DAKF11-01-C-0005 in Fort McCoy,
Wisconsin, Fort Gordon, Georgia,
and Fort Dix, New Jersey.**

ARB CASE NO. 07-089

DATE: July 27, 2007

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Petitioner:

**John V. Berry, Esq.; Sara C. Vins, Esq., Law Firm of John Berry, PLLC,
Washington, D.C.**

For the Respondent Administrator, Wage and Hour Division:

**Joan Brenner, Esq.; William C. Lesser, Esq.; Steven J. Mandel, Esq.; Jonathan L.
Snare, Esq., U.S. Department of Labor, Washington, D.C.**

ORDER DISMISSING APPEAL WITHOUT PREJUDICE

This case before the Administrative Review Board (Board) arises under the McNamara-O'Hara Service Contract Act (SCA), as amended.¹

The Petitioners, Andrew Aiken and all other similarly affected employees of ITS Medical Systems on U.S. Army Reserve Command Contract No. DAKF11-01-C-0005 in Fort McCoy,

¹ 41 U.S.C.A. § 351 *et seq.* (West 2007) and its implementing regulations at 29 C.F.R. Parts 4 and 8 (2007).

Wisconsin; Fort Gordon, Georgia; and Fort Dix, New Jersey, (Petitioners), filed this amended appeal requesting Judgment on the Merits on June 12, 2007.

This appeal stems from a previous appeal, ARB No. 07-017, involving the same parties. The Board dismissed 07-017 on April 23, 2007, without prejudice for lack of jurisdiction.

The Board has jurisdiction under 29 C.F.R. § 8.1(b) to hear final decisions by the Administrator, authorized representative, or administrative law judge under 29 C.F.R. § 4.56. In 07-017, the Petitioners argued that a letter that a Regional Specialist sent to them constituted a final decision from the Administrator. The Administrator disagreed and moved to dismiss the case for lack of jurisdiction. We agreed with the Administrator and dismissed the appeal.

In the Order dismissing 07-017, we specifically noted that the Administrator's Motion to Dismiss indicated that "[t]he Administrator will treat the Petition as a request for a final ruling and will issue a final decision in accordance with the SCA and the conformance regulations."² We stated that pursuant to 29 C.F.R. § 4.56(a), "[t]he Administrator will render a decision within 30 days of the receipt of the request or will notify the requesting party in writing within 30 days of the receipt that additional time is necessary." Thus, in accordance with this regulation, we indicated that the Administrator was required to either issue a decision within 30 days of the April 23 dismissal or notify the Petitioners, in writing, that additional time was necessary.

There was some confusion thirty days later. On May 24, 2007, the Petitioners attempted to contact the Administrator to get the final decision. The Petitioners were unsuccessful in contacting the Administrator through voice or written inquiries. On June 1st, the Petitioners filed this appeal with the Board for Judgment on the Merits claiming that the Administrator had failed to issue a final decision within the times prescribed by the regulations and the Board's April 23, 2007 dismissal. On June 2, 2007, Petitioner Aiken received a letter dated May 21, 2007, from the Administrator requesting more time. In light of this letter, on June 12, 2007, the Petitioners amended their Motion for Judgment on the Merits to reflect the update in correspondence.

On June 29, 2007, the Board issued an Order granting the Administrator fourteen days to respond to the Petitioners' appeal for Judgment on the Merits. On July 13, 2007, the Administrator responded to the Board's Order, and on that same day, issued a final decision in the case.

Since the Administrator has issued a final decision and informed the Petitioners of their appeal rights pursuant to 29 C.F.R. Part 8, we dismiss the Petitioners' appeal for Judgment on the Merits without prejudice. As indicated in the Administrator's final decision, the Petitioners are free to appeal the Administrator's July 13, 2007 final decision, should they choose to do so.

² See Administrator's Motion to Dismiss at 11 (ARB No. 07-017).

Accordingly, we **DISMISS** the Petitioners' appeal requesting Judgment on the Merits without prejudice.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge