



In the Matter of:

**R & W TRANSPORTATION,
INCORPORATED, a corporation,
and REBECCA J. BROWN, individually
and as President of the corporation.**

ARB CASE NO. 06-048

DATE: February 28, 2008

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For Petitioners:

Dean E. Wanderer, Esq., Fairfax, Virginia

For Respondent Administrator, Wage and Hour Division:

**Reena P. Raman, Esq., Ford F. Newman, Esq., William C. Lesser, Esq., Steven
J. Mandel, Esq., Howard M. Radzely, Esq., U.S. Department of Labor,
Washington, D.C.**

FINAL DECISION AND ORDER

The Wage and Hour Division of the United States Department of Labor (DOL) investigated whether R & W Transportation, Inc., and its President, Rebecca J. Brown, (collectively, R & W) failed to pay some of their employees required wage rates and fringe benefits pursuant to the McNamara-O'Hara Service Contract of 1965, as amended (SCA or Act)¹ for work on mail delivery service contracts R & W had with the United States Postal Service. To resolve the investigation, R & W and the DOL agreed to the entry of a Consent Findings and Order, which established the amount of R & W's back wages liability, as well as a schedule and methods for its payment. Subsequently, R & W moved to reopen this case before the Office of Administrative Law Judges (OALJ) to establish that a deduction of its agreed back wages liability was warranted in accordance with the terms of the Consent Findings and Order. The Administrative Law Judge (ALJ) determined that R & W failed to establish that a deduction of its agreed back wages liability was warranted and had failed to pay the back wages in accordance with the terms of the Consent Findings and Order. Thus, the ALJ determined that R & W should be

¹ See 41 U.S.C.A. § 351 *et seq.* (West 1994) and its implementing regulations at 29 C.F.R. Parts 4, 6 and 18 (2007).

debarred from entering into a service contract with the United States pursuant to the terms of the Consent Findings and Order. R & W petitioned for review by the Administrative Review Board. We affirm the ALJ's Decision and Order (D. & O.), as it is supported by the preponderance of the evidence, is reasonable and is in accordance with the SCA and its implementing regulations.

BACKGROUND

The parties stipulated to the following facts.² R & W is a corporation incorporated in Delaware, with its offices and places of business located in Virginia. The United States Postal Service entered into two contracts with R & W to provide mail delivery services between metropolitan areas in Virginia and Georgia. The SCA governs these contracts.³ In response to receiving a complaint, the Wage and Hour Division began an investigation of R & W in 1998. The investigation revealed that R & W had failed to pay some of its employees required wage rates and fringe benefits in accordance with the SCA.

After R & W failed to pay any of the back wages that the Wage and Hour Division found it owed, the Wage and Hour Division requested in January 2003 that the Postal Service withhold funds due to R & W on the two service contracts.⁴ Ultimately, on August 1, 2003, R & W executed Consent Findings, agreeing to the release of \$31,715.18 in withheld funds from the Postal Service to the DOL, which would be distributed to the employees owed back wages.⁵ In addition, R & W agreed to pay the additional \$5,130.90 in back wages and interest that the DOL found it owed in three installments over three months.⁶ Finally, the Consent Findings provided in relevant part that if R & W "provides proof of payment of wages to employees that are now part of the

² See Pre-Hearing Telephone Conference Transcript at 13-15; Hearing Transcript (HT) at 8.

³ The SCA generally requires that every contract in excess of \$2,500 entered into by the United States, the principal purpose of which is to provide services through the use of service employees in the United States, must contain a provision which specifies the minimum hourly wage and fringe benefit rates which are payable to the various classifications of service employees working on such a contract. See 41 U.S.C.A. § 351(a)(1)-(2). These wage and fringe benefit rates are predetermined by the Wage and Hour Division acting under the authority of the Administrator, who has been designated by the Secretary of Labor to administer the Act.

⁴ HT at 93.

⁵ See Consent Findings and Order at 4, ¶ 14.

⁶ See Consent Findings and Order at 4-5, ¶ 15.

total outstanding back wages . . . within the three-month installment payment period, deduction of that amount from the total amount owed by [R & W] will be made.”⁷ After review, a Department of Labor Administrative Law Judge approved and adopted the Consent Findings in an Order issued on October 28, 2003.

On November 4, 2004, R & W moved to reopen this case before the OALJ to establish that a deduction of its agreed back wages liability was warranted in accordance with the terms of the Consent Findings and Order.⁸ In response, the DOL filed a Motion for Summary Decision on R & W’s liability for failing to pay back wages that the DOL found it owed and urging that R & W be debarred pursuant to Section 5(a) of the SCA.⁹ During a Pre-Hearing Telephone Conference held on August 31, 2005, the ALJ granted partial summary decision as to the release of the \$31,715.18 in withheld funds from the Postal Service to the DOL, to be distributed to the employees owed back wages.¹⁰ In regard to the additional \$5,130.90 in back wages and interest that the DOL found that R & W owed, the parties stipulated that the Postal Service has withheld an additional \$4,906.94 due to R & W on the two service contracts, pending resolution of this case. Thus, a balance of \$223.96 remains in the back wages that the DOL found that R & W owes, which the withheld funds have not covered.¹¹

JURISDICTION AND STANDARD OF REVIEW

Pursuant to 29 C.F.R. § 8.1(b) (2007), the Board has jurisdiction to hear and decide “appeals concerning questions of law and fact from final decisions of the Administrator of the Wage and Hour Division or authorized representative” rendered under the SCA. *See also* Secretary’s Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002). In rendering its decisions, “the Board shall act as the authorized representative of the Secretary of Labor and shall act as fully and finally as might the Secretary of Labor concerning such matters.” 29 C.F.R. § 8.1(c). The Board’s review of the ALJ’s final rulings issued pursuant to the SCA is in the nature of an appellate proceeding. 29 C.F.R. § 8.1(d). The Board is authorized to modify or set aside the ALJ’s findings of fact only when it determines that those findings are not supported by a preponderance of the evidence. 29 C.F.R. § 8.9(b); *see Dantran, Inc. v. U.S. Dept. of Labor*, 171 F.3d 58, 71 (1st Cir. 1999). However, the Board reviews questions of law de novo. *United Gov’t*

⁷ See Consent Findings and Order at 5, ¶ 16.

⁸ See Consent Findings and Order at 5, ¶ 16.

⁹ See 41 U.S.C.A. § 354(a); 29 C.F.R. § 4.188(a)-(b).

¹⁰ See Pre-Hearing Telephone Conference Transcript at 15-16.

¹¹ See Pre-Hearing Telephone Conference Transcript at 13-15; HT at 8.

Sec. Officers of America, Local 114, ARB Nos. 02-012 to 02-020, slip op. at 4-5 (ARB Sept. 29, 2003); *United Kleenist Org. Corp. & Young Park*, ARB No. 00-042, ALJ No. 99-SCA-018, slip op. at 5 (ARB Jan. 25, 2002). The Board nonetheless defers to the Administrator's or authorized representative's interpretation of the SCA when it is reasonable and consistent with law. *See Dep't of the Army*, ARB Nos. 98-120/-121/-122, slip op. at 15-16 (ARB Dec. 22, 1999).

ISSUES

1. Whether the ALJ's finding that R & W failed to establish that a deduction of its agreed back wages liability was warranted is supported by a preponderance of the evidence.
2. Whether the ALJ's determination that R & W failed to pay the back wages it owed in accordance with the approved terms of the Consent Findings and Order is reasonable and supported by a preponderance of the evidence.
3. Whether the ALJ reasonably determined that R & W should be debarred from entering into a service contract with the United States for failing to comply with the terms of the Consent Findings and Order and failing to cooperate with the DOL in the resolution of this case.

DISCUSSION

1. *The ALJ's finding that R & W failed to establish that a deduction of its agreed back wages liability was warranted is supported by a preponderance of the evidence*

R & W moved to reopen this case to establish that a deduction of its agreed back wages liability was warranted in accordance with the terms of the Consent Findings and Order. The Consent Findings provided that if R & W "provides proof of payment of wages to employees that are now part of the total outstanding back wages . . . , deduction of that amount from the total amount owed by [R & W] will be made."¹² R & W contends that it submitted evidence, which establishes that it overpaid its employees, and therefore, the ALJ erred in finding that R & W failed to establish that a deduction of its agreed back wages liability was warranted.

The ALJ considered all of the evidence of record.¹³ R & W submitted employee payment records and spreadsheets, which R & W alleges establish that it overpaid its

¹² See Consent Findings and Order at 5, ¶ 16.

¹³ See D. & O. at 6-14.

employees due to incorrectly reported employee work hours.¹⁴ Initially, the ALJ noted the testimony of Rebecca J. Brown, R & W's President. Brown testified that she believed that she did not owe any of her employees back wages, as overpayments had been made to her employees, which she wanted to be applied to the amount of back wages R & W owed.¹⁵ In addition, one of R & W's former employees, Bobby Harrison, testified that he had received all of the wages and fringe benefits he was owed.¹⁶

In contrast, Diane Koplewski, who oversaw the DOL's investigation of R & W, testified that she reviewed the employee payment records and spreadsheets that R & W submitted to establish proof of "payment of wages to employees" that should be deducted from the amount of back wages R & W owed.¹⁷ Koplewski testified that this evidence presented "nothing new" and was merely duplicates of evidence that R & W had previously submitted.¹⁸ She concluded that this evidence did not establish that R & W had made any additional payment of the back wages that were due.¹⁹

The ALJ found that the evidence R & W submitted to allegedly establish that it overpaid its employees failed to prove that R & W had paid any of the back wages that it had agreed were due. Instead, the ALJ concluded that this evidence and Brown's testimony were merely an attempt to establish that R & W did not owe any back wages, which the ALJ found was contrary to the Consent Findings to which R & W had agreed.²⁰ Moreover, the ALJ properly noted that overpayments to employees for certain hours cannot offset back wages owed to employees for other hours pursuant to 29 C.F.R. § 4.166²¹ or offset fringe benefits owed to employees pursuant to 29 C.F.R. § 4.170(a).²²

¹⁴ See Respondent's Exhibits 1-38.

¹⁵ See HT at 39, 46-47, 52, 56, 59-61.

¹⁶ See HT at 77.

¹⁷ See HT at 87, 97.

¹⁸ See HT at 97-98, 135.

¹⁹ See HT at 100-119.

²⁰ D. & O. at 11, 14.

²¹ D. & O. at 12; *see also* 29 C.F.R. § 4.166 ("Failure to pay for certain hours at the required rate cannot be transformed into compliance with the Act by reallocating portions of payments made for other hours which are in excess of the specified minimum.").

²² See 29 C.F.R. § 4.170(a) ("Fringe benefits required under the Act shall be furnished, separate from and in addition to the specified monetary wages" and "[a]n employer cannot offset an amount of monetary wages paid in excess of the wages required under the determination in order to satisfy his fringe benefit obligations under the Act.").

Ultimately, because Brown's testimony that she did not owe any back wages was contrary to the Consent Findings she signed, the ALJ found that her testimony deserved little weight.²³ Similarly, the ALJ found that Harrison's testimony was not credible, as he could not adequately explain how he had been paid the fringe benefits the DOL determined he was owed.²⁴ On the other hand, in light of the thoroughness of her investigation and her experience, the ALJ found the testimony of the DOL's investigator, Diane Koplewski, to be credible and deserved more weight.²⁵ Consequently, the ALJ concluded that that R & W failed to establish that a deduction of its agreed back wages liability was warranted.²⁶

Generally, the Board will defer to the factual findings of an ALJ, especially in cases in which those findings are predicated upon the ALJ's weighing and determining credibility of conflicting witness testimony.²⁷ As we have noted, although the Board "reviews the ALJ's findings de novo, 'it must be remembered that the ALJ heard and observed the witnesses during the hearing. It is for the trial judge to make determinations of credibility, and an appeals body such as the ... Board should be loathe to reverse credibility findings unless clear error is shown.'"²⁸ Here, too, we follow our general practice, defer to the ALJ's credibility findings, and accept all the ALJ's findings of fact based on those credibility determinations. Consequently, we affirm the ALJ's finding that R & W failed to establish that a deduction of its agreed back wages liability was warranted, as they are reasonable and supported by a preponderance of the evidence.

2. *The ALJ's determination that R & W failed to pay the back wages it owed in accordance with the approved terms of the Consent Findings and Order is reasonable and supported by a preponderance of the evidence*

The ALJ properly noted that both Brown and Koplewski testified that R & W had not made any payments of the back wages it owed.²⁹ Thus, the ALJ further determined

²³ D. & O. at 12-14.

²⁴ See HT at 81-83; 111-112; D. & O. at 13-14.

²⁵ D. & O. at 12-14.

²⁶ D. & O. at 11, 13, 15.

²⁷ See *Adm'r, Wage and Hour Div. v. Groberg Trucking, Inc.*, ARB No. 03-137, ALJ No. 01-SCA-22, slip op. at 2-3 (ARB Nov. 30, 2004).

²⁸ See *Groberg Trucking, Inc.*, ARB No. 03-137, slip op. at 2-3 (quoting *Homer L. Dunn Decorating, Inc.*, WAB No. 87-003, slip op. at 2 (Mar. 10, 1989)).

²⁹ See HT at 56, 59-61, 96; D. & O. at 7, 10, 13.

that R & W had failed to provide any proof that it has paid any of the back wages it owed in accordance with the approved terms of the Consent Findings and Order.³⁰ Consequently, the ALJ found that R & W's failure to comply with the terms of the Consent Findings and Order and to cooperate with the DOL in the resolution of the case constituted a violation of the Consent Findings and Order.³¹ We affirm the ALJ's determinations, as they are reasonable and supported by a preponderance of the evidence.

3. *The ALJ reasonably determined that R & W should be debarred from entering into a service contract with the United States for failing to comply with the terms of the Consent Findings and Order and failing to cooperate with the DOL in the resolution of this case*

The terms of the Consent Findings and Order to which R & W and the DOL agreed set forth, in relevant part, that if R & W was determined to have violated the SCA or its implementing regulations, or failed to comply with the payment agreement, R & W would be subject to debarment, barring R & W from entering into a service contract with the United States.³² Under SCA Section 5(a), persons or firms that violate the Act are

³⁰ D. & O. at 14-16.

³¹ D. & O. at 16.

³² The terms of the Consent Findings and Order sets forth, in relevant part, the following:

If, during the relevant time period, representatives of the Department of Labor have reason to believe that any action by Respondents [Brown and R & W] during the relevant time period has violated the SCA or any of its associated regulations, other than an inadvertent clerical error, or if the Respondents fail to comply with the installment payment agreement set forth in paragraph 15 herein, *the Department of Labor may institute proceedings* for the purpose of determining whether a violation has occurred. If through the administrative proceeding and appeal process it is determined that a violation, other than an inadvertent clerical error, has occurred, Respondents shall pay to the Department of Labor the amount of wages and benefits determined to be owing together with interest thereon at the short-term rate plus 3 percent as provided in 26 U.S.C. §6621(a)(2), and Respondent shall agree to the entry of an order placing them on the list of persons who have violated the SCA and associated regulations and who are to be denied the award of any contract with the United States for the period provided in 41 U.S.C. §354(a). The effect of this paragraph is that *in any case* in which the Department of Labor demonstrates that either Respondent has committed violations of the SCA

subject to debarment, that is, are ineligible to receive federal contracts for a period of three years “[u]nless the Secretary otherwise recommends because of unusual circumstances.”³³ Debarment is presumed once violations of the Act have been found, unless the violator is able to show that “unusual circumstances” exist.³⁴ “Section 5(a) is a particularly unforgiving provision of a demanding statute. A contractor seeking an ‘unusual circumstances’ exemption from debarment, must, therefore, run a narrow gauntlet.”³⁵ But the Consent Findings and Order further state that R & W would be considered to have waived its right to attempt to show that relief from debarment is appropriate due to the existence of “unusual circumstances.”³⁶

during the relevant time period, that Respondent has waived the right to attempt to show the existence of “unusual circumstances” within the meaning of 41 U.S.C. § 354(a) and 29 CFR § 4.188 as it pertains to the defense in any such proceeding.

See Consent Findings and Order at 3-4, ¶ 11 (emphasis added).

³³ 41 U.S.C.A. § 354(a); 29 C.F.R. § 4.188(a), (b).

³⁴ *Hugo Reforestation, Inc.*, ARB No. 99-003, ALJ No. 1997-SCA-020, slip op. at 9 (ARB Apr. 30, 2001).

³⁵ *Sharipoff dba BSA Co.*, No. 1988-SCA-032, slip op. at 6 (Sec’y Sept. 20, 1991). *Accord Colorado Sec. Agency*, No. 1985-SCA-053, slip op. at 2-3 (Sec’y July 5, 1991); *Able Bldg. Maint. & Serv. Co.*, No. 1985-SCA-004 (Dep. Sec’y Feb. 27, 1991); *A to Z Maint. Corp. v. Dole*, 710 F. Supp. 853, 855-856 (D.D.C. 1989). See also *Vigilantes, Inc. v. Adm’r of Wage & Hour Div., U.S. Dep’t of Labor*, 968 F.2d 1412, 1418 (1st Cir. 1992) (“The legislative history of the SCA makes clear that debarment of a contractor who violated the SCA should be the norm, not the exception, and only the most compelling of justifications should relieve a violating contractor from that sanction.”)

³⁶ The SCA does not define “unusual circumstances.” Relevant regulations, however, establish a three-part test that states the criteria for determining when relief from debarment is appropriate. The contractor has the burden of proving “unusual circumstances” and must meet all three parts of the test to be relieved from the debarment sanction. 29 C.F.R. § 4.188(b)(1); *Hugo Reforestation*, slip op. at 12-13. Under the first part of this test, the contractor must establish that the conduct giving rise to the SCA violations was not willful, deliberate, aggravated, or the result of culpable conduct. Moreover, the contractor must demonstrate the absence of a history of similar violations, an absence of repeat violations of the SCA, and that any previous violations were not serious. 29 C.F.R. § 4.188(b)(3)(i).

If the contractor succeeds on the first part, the second part of the test requires that it demonstrate a good compliance history, cooperation in the investigation, repayment of the moneys due, and sufficient assurances of future compliance. If the contractor succeeds on the first and second parts, the third part lists other factors that must be considered, including whether the contractor has previously been investigated for SCA violations, whether the

R & W, in essence, conceded in the Consent Findings that it underpaid its service contract employees the wages and fringe benefits due them. Thus, R & W violated the SCA.³⁷ The SCA's debarment sanction applies to those persons or firms "found to have violated this chapter."³⁸ Moreover, R & W violated the agreed and approved terms of the Consent Findings and Order when it failed to pay the back wages it owed. Thus, the ALJ determined that R & W is subject to debarment under the terms of the Consent Findings and Order.³⁹

But R & W contends that the terms of the Consent Findings and Order only make it subject to debarment in "proceedings" "which the Department of Labor may institute."⁴⁰ Because R & W, and not the DOL, instituted the instant proceedings, R & W argues that it is not subject to debarment pursuant to the terms of the Consent Findings and Order.

However, the ALJ noted that the terms of the Consent Findings and Order further state "that *in any case* in which the Department of Labor demonstrates that [R & W] has committed violations of the SCA..., [R & W] has waived the right to attempt to show the existence of 'unusual circumstances.'"⁴¹ Consequently, the ALJ determined that an action, which only the DOL initiated, is not a prerequisite for R & W to be considered to have waived its right to attempt to show that relief from debarment is appropriate due to the existence of "unusual circumstances" under the terms of the Consent Findings and Order. We review an ALJ's determinations on procedural issues and evidentiary rulings under an abuse of discretion standard, that is, whether, in ruling as he did, the administrative law judge abused the discretion vested in him to preside over the proceedings.⁴² In this case, we agree with the ALJ's determination as a reasonable exercise of his discretion.

contractor has committed recordkeeping violations that impeded Wage and Hour's investigation, whether the determination of liability was dependent upon the resolution of a bona fide legal issue of doubtful certainty, the contractor's efforts to ensure compliance, and the nature, extent, and seriousness of any past or present violations. *See* 29 C.F.R. § 4.188(b)(3)(ii).

³⁷ 41 U.S.C.A. § 351 *et seq.*; Consent Findings and Order at 4, ¶¶ 14-15.

³⁸ 41 U.S.C.A. § 354(a).

³⁹ *See* D. & O. at 15-16; Consent Findings and Order at 3-4, ¶ 11.

⁴⁰ *See* Consent Findings and Order at 3, ¶ 11.

⁴¹ *See* 41 U.S.C.A. § 351 *et seq.*; Consent Findings and Order at 4, ¶ 11.

⁴² *See Canterbury v. Administrator, Wage & Hour Div., USDOL*, ARB No. 03-135, ALJ No. 2002-SCA-011, slip op. at 3 (ARB Sept. 2003); *Dickson v. Butler Motor Transit/Coach USA*, ARB No. 02-098, ALJ No. 2001-STA-039, slip op. at 4 (ARB July 25,

Alternatively, R & W contends that the remaining balance of \$223.96 in the back wages that the DOL determined that R & W owes is so insubstantial and de minimus, it constitutes “unusual circumstances” entitling it to relief from debarment. Similarly, R & W alleges that the underpayment of its employees was not due to any culpable conduct, but merely due to misunderstanding and erroneous employee timesheets. Moreover, R & W states that the DOL has not presented any evidence as to what R & W should have done to have avoided underpaying its employees. Finally, R & W argues that it has no prior history of SCA violations, cooperated in the investigation, intended to comply with the SCA in the past and in the future, and has been prepared to pay the amount of back wages it owes. These factors also constitute “unusual circumstances,” R & W urges, entitling it to relief from debarment.

R & W violated the SCA as it underpaid its service contract employees⁴³ and the ALJ found that the DOL demonstrated that it failed to comply with the terms of the Consent Findings and Order when it failed to pay the back wages it owed and failed to cooperate with the DOL in the resolution of this case.⁴⁴ Contrary to R & W’s characterization that the remaining balance of \$223.96 in back wages is de minimus, R & W has failed to pay any of the \$36,846.08 in back wages the DOL determined that it owes dating from 1998⁴⁵ at any point in this case. Instead, R & W has caused the DOL to resort to asking the Postal Service to withhold funds due to R & W on its service contracts, to be distributed to the employees owed back wages.⁴⁶ We affirm, therefore, the ALJ’s findings as reasonable and supported by a preponderance of the evidence.

Thus, we conclude that the ALJ held, in a permissible exercise of his discretion, that R & W “shall not be permitted to present any defense of ‘unusual circumstances’ and shall be debarred” pursuant to 41 U.S.C.A. § 354(a).⁴⁷ In any event, even if the ALJ had permitted R & W to present a defense of “unusual circumstances” entitling it to relief from debarment, since we affirm the ALJ’s finding that R & W failed to cooperate with the DOL in the resolution of this case, R & W failed to establish the second part of the three-part criteria test for determining when relief from debarment is appropriate due to

2003); *Supervan, Inc.*, ARB No. 00-008, ALJ No. 1994-SCA-047, slip op. at 4-5 (ARB Sept. 30, 2002); *Khandelwal v. Southern Calif. Edison*, ARB No. 98-159, ALJ No. 1997-ERA-006, slip op. at 2 (ARB Nov. 30, 2000).

⁴³ See Consent Findings and Order at 4, ¶¶ 14-15.

⁴⁴ D. & O. at 16.

⁴⁵ See D. & O. at 2; Consent Findings and Order at 4, ¶¶ 14-15.

⁴⁶ See Pre-Hearing Telephone Conference Transcript at 13-15; HT at 8, 93.

⁴⁷ *Id.*

“unusual circumstances” under 20 C.F.R. § 4.188(b)(3)(ii). Consequently, we affirm the ALJ’s holdings: that the Postal Service release the remaining \$4,906.94 in withheld funds due to R & W on the two service contracts at issue in this case for payment to the R & W employees owed back wages; that R & W pay the remaining balance of \$223.96 in back wages, plus interest in accordance with the terms of the Consent Findings and Order, to the DOL for payment to the R & W employees owed back wages; and that that R & W should be debarred from entering into a service contract with the United States pursuant to the terms of the Consent Findings and Order and 41 U.S.C.A. § 354(a) and its implementing regulations.⁴⁸

CONCLUSION

The ALJ determined that R & W failed to establish that a deduction of its agreed back wages liability was warranted and had failed to pay the back wages the DOL found that it owed in accordance with the terms of the Consent Findings and Order. Thus, the ALJ determined that R & W should be debarred from entering into a service contract with the United States. Since the ALJ’s determinations were reasonable, supported by a preponderance of the evidence and in accordance with the SCA and its implementing regulations, the ALJ’s Decision and Order is **AFFIRMED**.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

⁴⁸ See D. & O. at 17; *see also* Consent Findings and Order at 3, ¶ 11 (pay interest “at the short-term rate plus 3 percent as provided in 26 U.S.C. §6621(a)(2)”; Pre-Hearing Telephone Conference Transcript at 13-15; HT at 8.