



**In the Matter of:**

**VIMALRAJ MANOHARAN,**

**ARB CASE NO. 2021-0031**

**COMPLAINANT,**

**ALJ CASE NOS. 2018-LCA-00029  
2021-LCA-00009**

**v.**

**DATE: June 30, 2021**

**HCL AMERICA, INC.,**

**RESPONDENT.**

**Appearances:**

***For the Complainant:***

**Vimalraj Manoharan; *pro se*; Tamilnadu, India**

***For the Respondent:***

**R. Blake Chisam, Esq., K. Edward Raleigh, Esq., and Samantha Anne Caesar, Esq.; *Fragomen, Del Rey, Bernsen & Loewy, LLP*; Washington, District of Columbia**

**Before: James D. McGinley, *Chief Administrative Appeals Judge*; Thomas H. Burrell, *Administrative Appeals Judge*; and Randel K. Johnson, *Administrative Appeals Judge***

**ORDER DISMISSING INTERLOCUTORY APPEAL**

PER CURIAM. This case arises under the H-1B visa program of the Immigration and Nationality Act, as amended (INA), 8 U.S.C. § 1101(a)(15)(H)(i)(b) (2014) and 8 U.S.C. § 1182(n) (2013). The statute has implementing regulations at

20 C.F.R. Part 655, subparts H and I (2020). Vimalraj Manoharan (Complainant) filed a complaint against his former employer, HCL America, Inc. (Respondent), with the Wage and Hour Division of the U.S. Department of Labor (WHD), alleging that Respondent failed to pay him required wages and terminated his employment in retaliation for protected conduct.

After an investigation, the WHD issued a letter determining that Respondent failed to pay Complainant required wages and awarded Complainant \$8,999.45 in back wages. The WHD later found that the retaliation claim was not substantiated.<sup>1</sup> Complainant requested a hearing with the Office of Administrative Law Judges to review the WHD's findings. On March 4, 2021, Respondent filed a motion to dismiss the retaliation claim. On March 17, 2021, Respondent filed a motion for summary decision of the back wages claim, arguing that it does not owe any additional wages other than the amount the WHD assessed.<sup>2</sup> On March 31, 2021, the Administrative Law Judge (ALJ) issued a Decision and Order granting summary decision on the wage claim but denying Respondent's motion to dismiss the retaliation claim.<sup>3</sup>

On April 1, 2021, Complainant submitted a motion to recuse the ALJ from the proceedings, arguing that the ALJ demonstrated bias and impartiality toward Respondent. The ALJ denied Complainant's motion on April 6, 2021.

Complainant petitioned the Administrative Review Board (Board), seeking review of the ALJ's grant of summary decision on the wage claim and denial of the recusal motion. Because the ALJ's March 31, 2021 decision did not dismiss all

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<sup>1</sup> The WHD did not initially issue findings on the retaliation claim, which the Board ordered it to do in *Manoharan v. HCL America, Inc.*, ARB No. 2019-0067, ALJ No. 2018-LCA-00029 (ARB Dec. 7, 2020).

<sup>2</sup> The ALJ had initially dismissed the claim on October 2, 2019, because the WHD declined to prosecute the claim, but the Board reversed and remanded the decision and held that Complainant could act as prosecuting party for his claim. *Manoharan v. HCL America, Inc.*, ARB No. 2020-0007, ALJ No. 2018-LCA-00029 (ARB Dec. 21, 2020).

<sup>3</sup> The ALJ reissued the decision on April 1, 2021, with a Notice of Appeal Rights. The ALJ also ruled on two issues that are not pertinent to this appeal.

parties and all claims, Complainant's appeal is interlocutory.<sup>4</sup> Appeals of rulings on recusal motions are also considered interlocutory.<sup>5</sup>

The Secretary of Labor and the Board have repeatedly held that interlocutory appeals are generally disfavored and that there is a strong policy against piecemeal appeals.<sup>6</sup> The Secretary has given the Board discretion to consider interlocutory appeals, but such discretion may be exercised only in "exceptional circumstances."<sup>7</sup> When a party seeks review of an ALJ's interlocutory order, the Board has elected to look to the interlocutory review procedure provided in 28 U.S.C. § 1292(b), which requires certification from the deciding court before the interlocutory appeal may be heard.<sup>8</sup> Complainant did not request the ALJ to certify the issues for interlocutory review.

Absent certification, the Board may also consider interlocutory appeals under the "collateral order" exception.<sup>9</sup> To fall within the "collateral order" exception, the appealed order must "conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment."<sup>10</sup> This exception is strictly construed to avoid the "hazard that piecemeal appeals will burden the efficacious administration of justice and unnecessarily protract litigation."<sup>11</sup>

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<sup>4</sup> *Johnson v. FedEx Ground Package Sys., Inc.*, ARB No. 2019-0024, ALJ No. 2018-STA-00028, slip op. at 2 (ARB July 22, 2020).

<sup>5</sup> *Kossen v. Empire Airlines*, ARB No. 2021-0017, ALJ No. 2019-AIR-00022, slip op. at 1 (ARB Feb. 25, 2021); *Dann v. Bechtel SAIC Co., LLC*, ARB No. 2005-0150, ALJ Nos. 2005-SDW-00004 to -00006, slip op. at 3 (ARB Oct. 31, 2005).

<sup>6</sup> *Kim v. SK Hynix Memory Sols.*, ARB No. 2020-0020, ALJ No. 2019-SOX-00012, slip op. at 3 (ARB Jan. 28, 2020)

<sup>7</sup> Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13186, § 5(b)(69) (Mar. 6, 2020).

<sup>8</sup> *Powers v. Pinnacle Airlines, Inc.*, ARB No. 2005-0138, ALJ No. 2005-SOX-00065, slip op. at 5-6 (ARB Oct. 31, 2015).

<sup>9</sup> *Adm'r, Wage and Hour Div. v. Ten West Cattle, Inc.*, ARB No. 2020-0059, ALJ No. 2018-TAE-00035, slip op. at 2-3 (ARB Sept. 14, 2020).

<sup>10</sup> *Petitt v. Delta Airlines*, ARB No. 2019-0087, ALJ No. 2018-AIR-00041, slip op. at 4 (ARB Aug. 26, 2020) (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978)).

<sup>11</sup> *Greene v. U.S. Env't Prot. Agency*, ARB No. 2002-0050, ALJ No. 2002-SWD-00001, slip op. at 4 (ARB Sept. 18, 2002)

In his appeal of the ALJ's summary decision, Complainant contends that the ALJ incorrectly determined the period of time that Respondent was obligated to pay Complainant the required wages under the H-1B regulations. Complainant argues that the ALJ erred in determining there was not a genuine issue of material fact regarding when Complainant entered into employment with Respondent and incorrectly determined the last date of Complainant's authorized employment under H-1B regulations. These are merits issues that are fully reviewable upon appeal of the final decision of the ALJ.<sup>12</sup> Therefore, the ALJ's summary decision on the wages claim does not fall within the collateral order exception.

In his appeal of the ALJ's denial of the recusal motion, Complainant argues that the ALJ is partial toward Respondent and should have been disqualified from adjudicating the case. The Board, however, has held that the denial of a recusal motion is not subject to interlocutory review because disqualification issues are fully reviewable on appeal from the ALJ's final decision.<sup>13</sup>

We therefore **DISMISS** Complainant's interlocutory appeal.

**SO ORDERED.**

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<sup>12</sup> See *Ten West Cattle, Inc.*, ARB No. 2020-0059, slip op. at 4.

<sup>13</sup> *Dann*, ARB No. 2005-0150, slip op. at 3.