



In the Matter of:

**UNITED STATES DEPARTMENT OF LABOR,
OFFICE OF FEDERAL CONTRACT COMPLIANCE
PROGRAMS,**

PLAINTIFF,

v.

SKF USA, INC.,

DEFENDANT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Beverly Dankowitz, *U.S. Department of Labor, Washington, D.C.*

For the Respondent:

No appearance

FINAL DECISION AND ORDER

On August 20, 1997, the Office of Federal Contract Compliance Programs (“OFCCP”) filed an administrative complaint against SKF USA, Inc. (“SKF”) alleging that the company failed to hire qualified female applicants for entry-level machine operator positions in violation of Executive Order 11246, 43 Fed. Reg. 49240 (1978), 3 C.F.R. Part 230, *reprinted in* 42 U.S.C.A. §2000e note (West 1999). The parties submitted a Consent Findings and Order (“Consent Order”) in June 1999, that provides for a back pay award and requires SKF to place 12 members of the class into entry-level “operative” positions as regular full-time positions become available. The individuals who are entitled to relief under the Consent Order are listed in an exhibit that accompanies the Order. The Administrative Law Judge (“ALJ”) approved the Consent Order on July 16, 1999.

OFCCP subsequently discovered that one of the individuals listed on the exhibit is actually a man and, therefore, is not entitled to share in any relief under the Consent Order. Therefore, on December 10, 1999, OFCCP filed a motion with the ALJ to amend the exhibit and delete his name. The ALJ denied that motion because “counsel has not cited any authority to support my approval of an amendment at this stage of the proceeding and because I am unaware of any such authority.” OFCCP has appealed that decision to the Board.

The rules of practice for all administrative proceedings instituted by OFCCP are found at 41 C.F.R. §60-30.1 *et seq.* In the event that the parties are unable to reach a settlement on a complaint filed by OFCCP, the case proceeds to hearing. Following the hearing, the ALJ issues a recommended decision, the parties are allowed to file exceptions to that recommended decision, and the entire matter is forwarded to the Board which then makes a final administrative decision. 41 C.F.R. §60-30.25 - 30.30.

However, with regard to Consent Orders, the final administrative order is issued by the ALJ, not the Board. Specifically, 41 C.F.R. §60-13(d) states:

In the event an agreement containing consent findings and an order is submitted within the time allowed, the Administrative Law Judge, within 30 days shall accept such agreement by issuing his decision based upon the agreed findings, and his decision *shall constitute the final administrative order.*

(emphasis added).

We have found no rules which permit the Board to review a Consent Order issued by an ALJ, nor would we expect to find any since it would be oxymoronic for a “final” administrative order to be subject to further administrative review. Consequently, we conclude that OFCCP’s appeal must be dismissed for lack of jurisdiction.^{1/}

SO ORDERED.

PAUL GREENBERG

Chair

CYNTHIA L. ATTWOOD

Member

RICHARD A. BEVERLY

Alternate Member

^{1/} Although we must dismiss this appeal for lack of jurisdiction, we nevertheless feel compelled to point out that an amendment of a Consent Order may not be beyond the ALJ’s authority. The fact that there is no Department rule governing the amendment of a Consent Order does not necessarily preclude the parties from obtaining relief from what is an obvious mistake. We note that 41 C.F.R. §60-30.1 provides, in pertinent part, “[i]n the absence of a specific provision, procedures shall be in accordance with the Federal Rules of Civil Procedure.” Fed. R. Civ. P. 60 permits the court to relieve a party from an order or judgment for, among other things, clerical mistakes, mistakes, or inadvertence.