United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR, Complainant, v. SPIRIT AEROSYSTEMS, INC., Respondent, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW LOCAL 952), Authorized Employee Representative.	OSHRC Docket No. 10-1697

ORDER

On January 21, 2015, the Respondent filed a Motion to Reconsider the Commission's December 24, 2014 Decision and Remand in this case, and on February 4, 2015, the Secretary of Labor filed an Opposition to the Motion. After consideration of Respondent's Motion, Chairman Rogers and Commissioner Attwood conclude that there is nothing in Respondent's post-decision filings that would justify reconsideration of the Commission's decision.[1] And given that the decision only addressed the Secretary's prima facie showing of noncompliance, due process requires that we remand the case to the judge to allow Spirit to present evidence on its behalf and

[1] Commissioner MacDougall would grant the Respondent's Motion to Reconsider for the reasons set forth in her attached dissent.

the Secretary an opportunity for rebuttal. Accordingly, the Motion is denied.[2]

SO ORDERED.

/s/
Thomasina V. Rogers
Chairman

/s/
Cynthia L. Attwood
Commissioner

Dated: February 19, 2015

[2] The Commission also denies Respondent's Motion for Leave to File a Reply Brief to the Secretary's Opposition.

MACDOUGALL, Commissioner, dissenting.

I respectfully dissent and would grant Respondent's Motion to Reconsider for the reasons stated in my dissent in *Spirit Aerosystems, Inc.*, No. 10-1697 (OSHRC Dec. 24, 2014), as well as for the reasons stated in Respondent's Motion to Reconsider. Therefore, I see no need for additional briefing and deny Respondent's Motion for Leave to File a Reply Brief.

As a procedural matter, I note that Respondent's Motion to Reconsider is interlocutory in nature, *see* the OSH Act at § 12(j), 29 U.S.C. § 661(j) (Commission order does not become final until thirty days after decision has been issued by administrative law judge), and, therefore, is not governed by Federal Rule of Civil Procedure 59(e). *See* the OSH Act at § 12(g), 29 U.S.C. § 661(g); 29 C.F.R. § 2200.2 (in the absence of a specific provision, Commission procedure shall be in accordance with the Federal Rules of Civil Procedure). As such, the motion is more properly a request for the Commission to revisit its previous ruling.[1] Considering Spirit's request to reconsider or revisit the Commission's previous ruling, I would grant that request. *See Jones*, 557 F.3d at 677-78 (citing *Langevine v. Dist. of Columbia*, 106 F.3d 1018, 1023 (D.C. Cir. 1997)). It is apparent to me that the majority opinion contains manifest errors of both law and fact; hence, I conclude that the standard for reconsideration is satisfied.

By remanding this case to the administrative law judge for further proceedings, my colleagues have substantially delayed Spirit's opportunity to seek review in the appropriate Circuit Court of Appeals. Further, by creating new obligations beyond the scope of the

[1] However, I note that a motion to reconsider under Rule 59(e) may be granted where there is "the need to correct clear error or prevent manifest injustice." *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000); *Howard Hess Dental Laboratories Inc. v. Dentsply Intern., Inc*., 602 F.3d 237, 251 (3d Cir. 2010). *See also Caisse Nationale de Credit Agricole v. CBI Industries, Inc.*, 90 F.3d 1264, 1269 (7th Cir. 1996) ("Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence."). "Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party's position, or the controlling law." *Does*, 204 F.3d at 1012. I believe this standard guides the Commission here in considering Spirit's request to revisit its previous ruling. Thus, I conclude that Respondent's motion should be granted — not pursuant to Rule 59(e) but, rather, pursuant to the "general discretionary authority to review and revise interlocutory rulings prior to entry of final judgment . . . ." *Swisher v. United States*, 262 F. Supp. 2d 1203, 1207 (D. Kan. 2003); *see also Jones v. Bernanke*, 557 F.3d 670, 678 (D.C. Cir. 2009) (reconsideration of interlocutory order proper notwithstanding the inapplicability of Rule 59(e)); *Bausch & Lomb, Inc. v. Moria S.A.*, 222 F. Supp. 2d 616, 669 (E.D. Pa. 2003) ("A federal district court has the inherent power to reconsider interlocutory order when it is consonant with justice to do so.") (internal quotations omitted).

performance-based LOTO standard, and by creating uncertainty as to how an employer can meet those obligations, my colleagues' remand order (and, now, their subsequent denial of the motion for reconsideration) does a disservice to the parties and the regulated community. *See, e.g., Dayton Tire v. Sec'y of Labor*, 671 F.3d 1249, 1254 (D.C. Cir. 2012) ("The Commission does a disservice to both employers and employees when it fails to clarify health and safety standards promptly."). As I previously indicated in my dissent to the remand order, I believe the effect is contrary to the goal of promoting employee safety.

/s/
Heather L. MacDougall
Commissioner

Dated: February 19, 2015