



Date: February 19, 1997

Case No.: 96-JSA-4 (formerly 94-JSA-6)

In the Matter of:

VICTOR B. POLEWSKY,
Complainant,

v.

VERMONT DEPARTMENT OF EMPLOYMENT
AND TRAINING and ELECTRICAL, UNLIMITED,
Respondents.

ORDER DENYING MOTION TO DISMISS AND ORDER TO SHOW CAUSE

The above-captioned matter is before this Office on Respondent Vermont Department of Employment and Training's (Vermont) appeal of the September 5, 1996 determination by the Regional Administrator, which remanded the matter to the state agency for a hearing *de novo*. On November 4, 1996, Respondent Vermont filed a motion to dismiss asserting that the case had become moot. The Regional Administrator filed a response on December 23, 1996, and Complainant filed responses on January 14, 1997. Respondent Vermont filed a response to the Regional Administrator's pre-hearing brief on December 30, 1996.

In support of its motion to dismiss, Respondent Vermont states that the employer at issue, Electrical, Unlimited, is no longer in business. Respondent Vermont submitted the affidavit of Thomas W. Douse, Director of the Employment and Training Programs Division. He states that he is responsible for the unemployment insurance program administered by the Vermont Department of Employment and Training and that Respondent Electrical, Unlimited went out of business and ceased providing employment on February 26, 1993. Respondent Vermont argues that this case is moot because the only relief which could be granted is the discontinuation of services, 20 C.F.R. § 658.501(a)(1), action which cannot be taken against an entity that no longer exists and which has no successors.

The Regional Administrator and Complainant contend that this matter is not moot due to the cessation of business by Respondent Electrical, Unlimited. They argue that there is nothing preventing

Respondent Electrical, Unlimited from returning to business and entering the job services program again. Although I do not consider this isolated possibility alone sufficient to avoid the mootness problem, the regulations provide that an employer who has had job services discontinued pursuant to 20 C.F.R. § 658.500 will not be allowed to reenter the system until the deficiency has been cured. 20 C.F.R. § 658.504(a)(2). Thus, if the only remedy available were to discontinue services, then I would hold that this case is moot; the only issue would be the legality of the challenged practices. However, because the regulations also provide that an employer may return to participating in the job services program, after being found deficient, by demonstrating compliance, then the cessation of business by Respondent Electrical, Unlimited is not sufficient to render this controversy moot. Accordingly, Respondent Vermont's motion to dismiss is DENIED.

In addition, Respondent Vermont requested a hearing in its appeal to this Office. The Regional Administrator stated in its pre-hearing brief that a hearing was not necessary to resolve the issues raised by the appeal of the determination of September 5, 1996. As it appears that only a question of law pertaining to the proceeding before the state agency is at issue, the parties are hereby ORDERED to show cause, on or before March 14, 1997, why a hearing is necessary.¹ If a party desires a hearing, please propose a suitable location, keeping in mind 20 C.F.R. § 658.424(e) and Complainant's request that a hearing be held in Port Huron or Detroit, Michigan.

SO ORDERED.

JMV/cy

JOHN M. VITTONI
Chief Administrative Law Judge

¹Complainant stated in his "Notice of Cross-Appeal" that he did not request a hearing on his cross-appeal, but he did not address the necessity of holding a hearing on Respondent Vermont's appeal. In addition, Complainant has not set forth the reasons for his "cross-appeal" as required by the Notice of Docketing and Pre-hearing Order dated October 11, 1996.