



Issue date: 25Jan2002

CASE NO.: 2001-JTP-0002

In the Matter of:

**HITEK LEARNING SYSTEMS, INC.,
Complainant,**

v.

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION, and

**GRANT OFFICER, UNITED STATES DEPARTMENT OF LABOR,
EMPLOYMENT AND TRAINING ADMINISTRATION
Respondents.**

**FINAL ORDER OF DISMISSAL FOR
LACK OF JURISDICTION**

The above-captioned matter, a case brought under the Job Training Partnership Act (JTPA) (formerly 29 U.S.C. § 1501 *et seq.* [repealed], 20 C.F.R. Parts 626 to 638), is hereby dismissed, as this tribunal lacks the requisite jurisdiction to hear this matter.

PROCEDURAL BACKGROUND

On September 21, 2001, Hitek Learning Systems, Inc. (hereafter "Complainant") filed a "Request for Hearing and Appeal from Final Determination" with the Office of Administrative Law Judges (hereafter "OALJ"), in which Complainant alleged numerous defects in the findings by the South Carolina Employment Security Commission (hereafter "SCESC" or "Respondent") Hearing Panel. On October 1, 2001, Associate Chief Administrative Law Judge Thomas M. Burke issued a Notice of Docketing and Order Directing Briefs on Jurisdiction. All parties to this action submitted timely briefs. Complainant asserts that jurisdiction is proper, specifically alleging that a final determination has been issued by the federal Grant Officer and that an appeal of this decision to the OALJ is proper. Both Respondents argue that jurisdiction does not exist, stating that the federal Grant Officer has not issued a final determination, nor has a complaint been filed with the Grant Officer, either of which must be true before jurisdiction can be properly exercised by this tribunal. Both Claimant and the SCESC filed their briefs on October 16, 2001; the Department of Labor, the second respondent, filed on October 17, 2001.

This action was assigned to the undersigned, who, by a Notice of Assignment and Order of November 2, 2001, invited the parties to submit additional briefs in support of their positions. Only the Department of Labor submitted a second brief on this matter, filed on November 30, 2001, in which they maintained that jurisdiction did not exist. Additionally, the Department has argued that remand would be improper and that the only remedy available is dismissal.

FACTS

On or about April 1, 1999, Complainant was awarded a grant (Grant #96794K) (hereafter “Grant”) by Respondent SCESC under title II B of the JTPA for the purpose of providing economically disadvantaged youth located in Richland and Lexington counties of South Carolina with the opportunity to improve their basic educational skills and employment competencies. (Stipulation of Facts [unsigned], Exhibit P to Hearing Request; Grant, Exhibit A.¹) Section 3.13.5 of the Grant provides for grievance and hearing procedures for noncriminal complaints (referencing 20 C.F.R. 626.500), but also provides that complaints of discrimination under section 167(a) of the Act are to be handled under 29 C.F.R. Part 34. The instant case arises out of a dispute concerning certain invoices that were submitted in August 1999. Because the Office of Inspector General of the Department of Labor (hereafter “OIG”) was investigating allegations that Complainant had encouraged participants to perform poorly on the tests qualifying them for admission,² SCESC notified Complainant by letter of April 11, 2000 that it was going to withhold program funds pending resolution of the issue, under the authority of section 3.5.2.2 of the Grant. (Exhibit G, H, N, O). Complainant requested resolution from the Chief Procurement Officer on August 4, 2000 and filed a formal grievance on February 12, 2001. (Exhibit I, L). However, the Hearing Panel (the Midlands Workforce Development Board) denied the request by letter of March 26, 2001. (Exhibit M). Complainant filed an exception to the Hearing Panel’s determinations with SCESC on April 5, 2001, but on August 31, 2001 the SCESC concurred with the previous decision to deny payment pending completion of the OIG investigation.³ (Exhibits N, O). At that point, Complainant filed a hearing request with the OALJ, as discussed above.

¹ Exhibit references relate to the Request for Hearing and Appeal from Final Determination filed with the Office of Administrative Law Judges on September 21, 2001.

² Because funding was partly dependent upon degree of improvement by participants during the program – measured by comparison of the qualifying test (“pre-test”) and a later test (“post-test”) – the results of these pre-tests affected the amount of funding Complainant would receive. (Exhibits N, O).

³ Respondent SCESC acknowledges that Complainant has exhausted its administrative remedies at the grantee level.

DISCUSSION

Because Complainant has not satisfied the procedural requirements of the regulations, by first seeking a final determination from the Grant Officer for the U.S. Department of Labor, this tribunal lacks subject-matter jurisdiction to hear this action and, as a result, it must be dismissed. It is a fundamental principle of law that jurisdictional requirements must be met before any tribunal may hear the action. *See City of New York v. Clinton*, 985 F. Supp. 168, 173 (D.D.C. 1998) (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997)). Once jurisdiction is challenged, it is the plaintiff's (or complainant's, as the case is here) burden to prove that all jurisdictional requirements are met. *See, e.g., Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982).

The authority of the OALJ under the JTPA is limited by 20 C.F.R. §§ 627.801, 636.10. Section 636.10(a) identifies two situations where this office may exercise jurisdiction. First, appeal to the OALJ is permitted if the request for hearing is submitted “[w]ithin 21 days of receipt of the Grant Officer’s final determination.” 20 C.F.R. § 636.10(a)(1) (2001). Section 627.801 sets forth an identical requirement for actions brought under that part. Alternatively, for Part 636 actions, if a complaint has been filed with the Grant Officer and a final determination has not been issued within one hundred twenty days after such filing (absent any mutually agreed to extension), the grantee may request a hearing with the OALJ. *Id.* Section 627.801 has no such alternative.

In their briefs on this matter, the parties are in dispute as to which set of procedural rules governs this action.⁴ Complainant now relies on 20 C.F.R. Part 627 (relating to review of “a final determination imposing a sanction or corrective action or denying financial assistance,” 20 C.F.R. 627.801(a)) while both Respondents cite to the provisions contained in 20 C.F.R. Part 636 (relating to grievance procedures).⁵ As a grievance is involved here, Part 636 appears to be applicable. However, it is unnecessary to determine which (if any) provision is applicable, as Complainant has not satisfied the requirements of either regulation. While Complainant states that it is “informed and believes” that a final determination by the Grant Officer has been made, its submissions do not support this contention. Additionally, Complainant has not submitted proof that it actually filed a complaint with the Grant Officer, which precludes application of the alternative method of obtaining jurisdiction discussed in section 636.10(a). By failing to prove the existence of any of these facts, Complainant has not shown that appropriate procedural requirements under either section have been met and, as such, dismissal is warranted.

As a final matter, Respondent SCESC has suggested in its October 12, 2001 response that, because the August 31, 2001 decision and transmittal letter did not inform Complainant of the next procedural step, this case should be referred to the Grant Officer (*i.e.*, remanded). In its

⁴ The complaint/hearing request refers to 20 C.F.R. Part 636, a point that is noted in Judge Burke’s Notice of Docketing and Order Directing Briefs on Jurisdiction.

⁵ The JTPA (adopted under Public Law 97-300, 96 Stat. 1322 (Oct. 13, 1982)) was amended in 1992 to allow for review of grievance determinations by the Secretary of Labor, together with the opportunity for a hearing. Public Law 102-367, 106 Stat. 1046 (Sept. 7, 1992).

response of November 30, 2001, the Department of Labor argues that because this tribunal lacks jurisdiction, it cannot exercise jurisdiction to remand this case to the Grant Officer. As the Department argues, dismissal is appropriate under these circumstances. Accordingly,

ORDER

IT IS HEREBY ORDERED that the above-captioned matter is **DISMISSED** for lack of jurisdiction.

PAMELA LAKES WOOD
Administrative Law Judge

Washington, DC

NOTICE OF APPEAL RIGHTS: Any party dissatisfied with this Final Order of Dismissal may appeal it to the Administrative Review Board within 20 days after receipt of the Order, by filing exceptions specifically identifying the procedure, fact, law, or policy to which exception is taken. Thereafter the decision of the administrative law judge shall become the final decision of the Secretary unless the Secretary, within 30 days of such filing, has notified the parties that the case has been accepted for review. The petition for review may be filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Ave., N.W., Washington, DC 20210. A copy of any such petition must also be provided to the Chief Administrative Law Judges, 800 K Street, N.W., Washington, DC, 20001-8002.