



DATE: APR 12 1993

IN THE MATTER OF

TODD ELLIOTT KOGER,
Complainant

v.

U.S. DEPARTMENT OF LABOR,
Respondent

CASE No.: 93-JTP-11

ORDER GRANTING MOTION TO DISMISS

On January 30, 1993, Complainant filed with this Office a request for hearing which alleged, inter alia, violations by the United States Department of Labor (DOL) of the Job Training Partnership Act (JTPA), 29 U.S.C. § 1501 et seq., and the regulations issued thereunder at 20 C.F.R. Part 629. According to Complainant, the DOL did not take corrective measures with regard to Pennsylvania's alleged failure to follow its own grievance procedures for JTPA matters. This Office issued a Notification of Receipt of Request for Hearing and Prehearing Order on February 4, 1993.

On March 4, 1993, the DOL filed a Motion to Dismiss and Motion to Stay Filing of the Administrative File and Submission of Prehearing Exchanges. The DOL argues that this matter does not fall within either of the provisions which authorizes this Office to hear JTPA cases. Pursuant to 20 C.F.R. § 629.57(a), this Office only has jurisdiction under Sections 164(f) and 166(a) of the Act.

Although the Complainant cites to Section 166(a) as the authority for jurisdiction, this provision does not allow the Complainant a right of appeal to this Office.

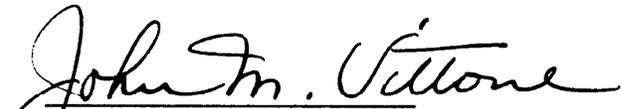
Section 166(a) provides:

(a) Whenever any applicant for financial assistance under this Act is dissatisfied because the Secretary has made a determination not to award financial assistance in whole or in part to such applicant, the applicant may request a

hearing before an administrative law judge of the Department of Labor. A similar hearing may also be requested by any recipient upon whom a corrective action or a sanction has been imposed by the Secretary. Except to the extent provided for in section 167, all other disputes arising under this Act shall be adjudicated under grievance procedures established by the recipient or under applicable law other than this Act.

In this case, the Secretary has not made a determination not to award financial assistance nor has the Secretary imposed any corrective action or sanction upon the Complainant. Moreover, the Complainant does not fit the definition of a recipient as provided by the regulations at 20 C.F.R. § 626.4. Accordingly, Section 164(f) is inapplicable because it also requires that an eligible complainant be a recipient.

Having reviewed the administrative file, I find that neither Section 166(a) nor Section 164(f) confers on this Office authority over the instant matter. Therefore, the Complainant's request for hearing is denied for lack of jurisdiction. It is hereby ORDERED that this matter is DISMISSED.


JOHN M. VITTONI
Deputy Chief Judge

JMV/LM/mb

SERVICE SHEET

CASE NAME: Todd Elliott **Koger**

CASE No.: **93-JTP-11**

TITLE OF DOCUMENT: Order Granting Motion to Dismiss

This is to certify that a copy of the above-referenced document was served by regular mail, this 12th day of April 1993, upon the following:

Harry L. Sheinfeld
Associate Solicitor for
Employment and Training
200 Constitution Ave., N.W.
Room N-2101
Washington, D.C. 20210
Attn: Yvonne K. Sening, Esq.

Todd Elliott Koger
835 Woodworth Street
Pittsburgh, PA 15221

David O. Williams
Office of the Special Counsel
Employment & Training Admin.
200 Constitution Ave., N.W.
Room N4671
Washington, D.C. 20210

Virginia Lloyd
Office of Management Support
Employment and Training Admin.
U.S. Department of Labor
200 Constitution Ave., N.W.
Room N4671
Washington, D.C. 20210

Marshall H. Harris
Regional Solicitor
U.S. Department of Labor
3535 Market Street
Room 14480, Gateway Bldg.
Philadelphia, PA 19104


Margaret Briston