

U.S. Department of Labor

Office of Administrative Law Judges
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Date Issued: July 5, 2002

In the Matter of:

Case No.: 2002-WIA-2

UNITED AMERICAN INDIAN INVOLVEMENT, INC.

Complainant

v.

U.S. Department of Labor

Respondent

ORDER GRANTING MOTION TO DISMISS

On May 20, 2002, the Respondent Department of Labor filed a Motion to Dismiss this appeal from the decision of the Respondent to provide a waiver from competition for Section 166, Workforce Investment Act ("WIA") funding for the County of Los Angeles, arguing that the Office of Administrative Law Judges lacks jurisdiction over the appeal. The Respondent bases this assertion on the fact that the Complainant's Notice of Intent under the Workforce Investment Act is to apply for a grant for an area that has already been waived from competition under 29 U.S.C. § 2911 (c)(2), and under 20 C.F.R. § 667.800 and 668.270, the Office of Administrative Law Judges' lacks jurisdiction over a decision to grant a waiver. The Complainant did not file a response but instead relies on previous submissions to the court.

It is agreed that the Office of Administrative Law Judges lacks jurisdiction to make a determination in this case. 29 U.S.C. § 2911(c)(2) states:

The competition for grants, contracts, or cooperative agreements conducted under paragraph (1) shall be conducted every 2 years, except that if a receipt of such a grant, contract or agreement has performed satisfactorily, the Secretary may waive the requirements for such competition on receipt from the recipient of a satisfactory 2-year program plan for the succeeding 2-year period of the grant, contract, or agreement.

In the instant case, it is uncontested that the Secretary waived the area from competition that the Complainant was interested in. In fact the Complainant specifically challenges the Secretary's determination to grant a waiver.

The regulations promulgated under the WIA do not allow for an administrative review of the grant of a waiver. 20 C.F.R. § 667.825(a) provides that an appeal from the denial of a grant under Part 668 of the WIA may be taken under Section 667.800. Section 667.800(a) states:

An applicant for financial assistance under title I of WIA which is dissatisfied because we have issued a determination not to award financial assistance, in whole or in part, to such applicant...may appeal to the U.S. Department of Labor, Office of Administrative Law Judges...

Here, however, a determination to award or not award financial assistance was never made. The area for which the Complainant submitted its Notice of Intent received a waiver from the Secretary. As such, it was not open for competition and no determination had to be made by the grant officer. Section 668.250(a), specifically dealing with Indian and Native American Programs under the WIA, states a solicitation for grant applications for an area is issued every two years “unless there has been a waiver for competition for the area.” Since no determination was made by the grant officer, there is no determination from which an appeal can be taken by Complainant and no determination that can be reviewed by the Office of Administrative Law Judges. Accordingly;

The Respondent’s Motion To Dismiss is **GRANTED**.

SO ORDERED.

THOMAS M. BURKE

Associate Chief Administrative Law Judge

NOTICE OF APPEAL RIGHTS. Any party dissatisfied with this Order Granting Motion To Dismiss 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, D.C. 20210. A copy of any such petition must also be provided to the Chief Administrative Law Judge, Office of Administrative Law Judges, 800 K Street, N.W., Washington, D.C., 20001-8002.

