

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 28 November 2012**

Case No.: 2011-WIA-00009

In the Matter of:

NAF MULTICULTURAL HUMAN  
DEVELOPMENT CORP.,  
Complainant,

v.

U.S. DEPARTMENT OF LABOR,  
Respondent.

**ORDER OF DISMISSAL**

This case arises under the provisions of the Workforce Investment Act<sup>1</sup> (WIA or Act) and the regulations contained at 20 C.F.R. Parts 652, 660-670, and 29 C.F.R. Part 37. The WIA provides funding for job training and employment programs for migrant farm workers under the National Farm Workers Jobs Program (NFWJP). Parties interested in receiving such grants apply directly to the Department of Labor, pursuant to Solicitations for Grant Applications (SGAs) published in the Federal Register. Unsuccessful grant applicants may request review of the grant officer's decisions by the Office of Administrative Law Judges.<sup>2</sup>

In this case, the Complainant unsuccessfully applied for a grant to provide migrant and seasonal farmworkers with employment and training in the state of Nebraska during program year 2011 (July 1, 2011 to June 30, 2012). On July 1, 2011, the Complainant was notified that its application was not selected for funding. On July 14, 2011, the Complainant sought review of the grant officer's determination and requested a hearing. The hearing was conducted on December 13, 2011, at which the grant officer, B. Jai Johnson, testified. The Respondent submitted a post-hearing brief on February 13, 2012.

On October 10, 2012, the Respondent filed a Motion to Dismiss the case as moot. The Complainant has not responded. Pursuant to 20 C.F.R. § 667.825(b), "If the ALJ rules that the organization should have been selected . . . we will select and fund the organization within 90 days of the ALJ's decision *unless* the end of the 90-day period is within six (6) months of the end of the funding period." (emphasis added). In *Job Service of North Dakota v. U.S. Department of*

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<sup>1</sup> 29 U.S.C. § 2801 *et seq.*

<sup>2</sup> 20 C.F.R. § 667.800.

*Labor*,<sup>3</sup> the Administrative Review Board, interpreting an analogous provision under the Job Training Partnership Act (JTPA), 29 U.S.C. §1501 *et seq.*, stated:

It is well established, pursuant to this provision [20 C.F.R. §633.205(e)], that appeals of non-selection are moot where the ALJ has not ordered the only available relief designation of a different applicant within the first 15 months of the [two year] grant period. *See State of Maine v. United States Dep't of Labor*, 770 F.2d 236, 239-40 (1st Cir. 1985) (under the Department's regulation, a claim that the Department violated its own regulation in awarding a grant is moot once the grant period has ended); *Campesinos Unidos, Inc. v. United States Dep't of Labor*, 803 F.2d 1063, 1069 (9th Cir. 1986) ("[I]t is clear that the regulation does not provide any remedy for an applicant improperly denied funding if the Department's determination is not reached until the grant period is within nine months of its expiration."); *North Dakota Rural Development Corp. v. United States Dep't of Labor*, 819 F.2d 199, 200 (8th Cir. 1987) (same); *Lake Cumberland*, 1991 WL 43905 at \*\*1 ("[U]nless an unsuccessful applicant receives a final decision from either the Department of Labor or a Court of Appeals finding that the applicant was wrongfully denied the grant prior to nine months before the end of the funding period, the applicant has no remedy" and the case is moot); *see also Cherokee Nation of Oklahoma v. United States Dep't of Labor*, ARB Case No. 98-153, ALJ Case No. 97-JTP-12, Order of Dismissal, Feb. 12, 1999, slip op. at 4 (under analogous provision of regulation governing the Indian and Native American Employment and Training Provisions of the JTPA, at 20 C.F.R. §632.12(a)) and *Illinois Migrant Council v. United States Dep't of Labor*, Case No. 84-JTP-10, Sec. Final Dec. and Ord., July 17, 1986, slip op. at 9-11 (case moot where the funding period had expired).<sup>4</sup>

Here, the grant period expired on June 30, 2012. In order for any relief to be available, a decision in the Complainant's favor must have been reached prior to nine months before June 30, 2012.

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<sup>3</sup> 1997-JTP-23 at 6-7 (April 27, 1999).

<sup>4</sup> *See also Midwest Farmworker Employment and Training v. U.S. Dep't of Labor*, 200 F.3d 1198 (8th Cir. 2000) (affirming the ARB's dismissal of the complainant's claim as moot because the first fifteen months of the grant period had expired (*i.e.*, there were less than nine months remaining in the two year grant period), and finding that there was no exception to the mootness doctrine); *United Urban Indian Council v. U.S. Dep't of Labor*, 2002 WL 442378, at \* 1 (10th Cir. March 22, 2002) ("Because the grant period ends on June 30, 2002, this case is already well-within the six-month period. Thus, UUIC could not be refunded now, even if this court were to determine that the contested territory should have been awarded to UUIC.").

The Complainant has not advanced any argument as to why this case should be decided despite the grant period being expired. Accordingly, the Complainant's complaint is moot.

THEREFORE, it is HEREBY ORDERED that this case is DISMISSED.

Joseph E. Kane  
Administrative Law Judge

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file exceptions ("Exception") with the Administrative Review Board ("Board") within twenty (20) days of the date of issuance of the administrative law judge's decision. *See* 20 C.F.R. § 667.830. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Your Exception must specifically identify the procedure, fact, law, or policy to which exception is taken. You waive any exceptions that are not specifically stated. Any request for an extension of time to file the Exception must be filed with the Board, and copies served simultaneously on all other parties, no later than three (3) days before the Exception is due. *See* 20 C.F.R. § 667.830; Secretary's Order 1-2002, ¶4.c.(42), 67 Fed. Reg. 64272 (2002).

A copy of the Exception must be served on the opposing party. *See* 20 C.F.R. § 667.830(b). Within forty-five (45) days of the date of an Exception by a party, the opposing party may submit a reply to the Exception with the Board. Any request for an extension of time to file a reply to the Exception must be filed with the Board, and a copy served on the other party, no later than three (3) days before the reply is due. *See* 20 C.F.R. § 667.830(b).

If no Exception is timely filed, the administrative law judge's decision becomes the Final Decision and Order of the Secretary of Labor pursuant to 20 C.F.R. § 667.830(b) unless the Board notifies the parties within thirty (30) days of the date of issuance of the administrative law judge's decision that it will review the decision. Even if an Exception is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the filing of the Petition notifying the parties that it has accepted the case for review. *See* 20 C.F.R. § 667.830(b).