



Issue Date: 27 March 2018

Case No.: 2017-WIA-00001

In the Matter of:

IOWA WORKFORCE DEVELOPMENT,
Complainant,

v.

**EMPLOYMENT AND TRAINING ADMINISTRATION,
U.S. DEPARTMENT OF LABOR,**
Respondent.

ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION

This matter involves an application for grant funding authorized by Section 169 of the Workforce Innovation and Opportunity Act (“WIOA”), Pub. L. No. 113-128, 128 Stat. 1425. The implementing regulations for WIOA are found at 20 C.F.R. Part 683. For the reasons that follow, the Complainant’s request for review is DISMISSED for lack of jurisdiction.

BACKGROUND

On June 30, 2017, the Employment and Training Administration (“ETA”), U.S. Department of Labor (“DOL”), published a Notice of Availability of Funds and Funding Opportunity Announcement (“FOA”) for Disability Employment Initiative Grants, FOA-ETA-17-05, with a closing date of July 31, 2017. In response to this funding opportunity, Iowa Workforce Development (“Complainant”) submitted a grant application on July 28, 2017. On August 3, 2017, an ETA Grant Officer issued a letter to Complainant advising that its “application was found non-responsive” in accordance with the FOA because “[t]he application failed to provide a Budget Narrative as specified in Section IV.B.2, pages 15-17.” The letter continues, “Since your application failed to include one or more of the required component(s) as listed in the solicitation, the application was deemed non-responsive and will not be given further consideration.”

On August 22, 2017, Complainant filed a letter with the Office of Administrative Law Judges (“OALJ”) stating that it wishes “to appeal the denial of our application for the Disability Employment Initiative Round VIII,” based on the Grant Officer’s finding that the application was non-responsive for failure to submit the required Budget Narrative.

Because it was unclear if OALJ had the authority to hear this case, the undersigned issued a *Notice of Docketing and Order to Show Cause* (“Order”) on September 21, 2017.¹ On September 29, 2017, Complainant submitted its *Written Statement in Response to Order to Show Cause* (“Response”). On October 24, 2017, Grant Officer, through counsel, submitted its *Answer to Complainant’s Written Statement in Response to Order to Show Cause* (“Answer”).

DISCUSSION

Because Complainant has not satisfied the procedural requirements of the regulations by first obtaining a final determination from the ETA Grant Officer, this tribunal lacks subject-matter jurisdiction to hear this action and, as a result, it must be dismissed.²

OALJ, as an administrative agency, is a “tribunal[] of limited jurisdiction. As a general rule, [administrative agencies] have only such adjudicatory jurisdiction as is conferred on them by statute.” *Dep’t of Labor & Eddis v. LB&B Associates, Inc.*, ARB Nos. 01-031, 01-086, ALJ No. 2000-NQW-00001, PDF at 4 (ARB Aug. 8, 2001) (citations omitted). In this case, Complainant asks OALJ to review the denial of its application for WIOA funds by the ETA Grant Officer. The applicable regulation is found at 20 C.F.R. Part 683, Subpart H. As is relevant here, the regulations provide the following regarding what DOL actions may be appealed to OALJ:

- (a) An applicant for financial assistance under title I of WIOA who is dissatisfied by a determination not to award Federal financial assistance, in whole or in part, to such applicant...may appeal to the [OALJ] within 21 days of receipt of the final determination....
- (c) A request for a hearing under this subpart must specifically state those issues or findings in the final determination upon which review is requested. Issues or findings in the final determination not specified for review, or the entire final determination when no hearing has been requested within the 21 days, are considered resolved and not subject to further review. Only alleged violations of

¹ OALJ’s review of a grant officer’s action is limited, and OALJ does not have the authority to directly review grant applications and award grant funding. *See* 20 C.F.R. §§ 683.810(e), 683.810; *United Tribe of Kan. & Se. Neb., Inc. v. U.S. DOL, ETA*, ARB No. 01-026, ALJ No. 2000-WIA-003, slip op. at 5 (ARB Aug. 6, 2001) (holding that the standard of review for appeals of grant denials under the Workforce Investment Act of 1998 is a highly deferential standard and requires that the grant officer’s decision be “affirmed unless the party challenging the decision can demonstrate that the decision lacked any rational basis.”). Thus, to the extent that Complainant sought substantive review of the merits of its application, rather than a review of the Grant Officer’s determination, consideration of such a request was within the Grant Officer’s purview. Further, it appears that Complainant did not ask the Grant Office to reconsider its action or to allow it to submit the Budget Narrative, despite the expiration of the FOA closing date, before requesting OALJ review.

² 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 burden of the party asserting jurisdiction, here the Complainant, to prove that all jurisdictional requirements are met. *See, e.g., Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982).

WIOA, its regulations, the grant or other agreement under WIOA raised in the final determination and the request for hearing are subject to review.

20 C.F.R. § 683.800 (emphasis added).

Given the limits of OALJ's jurisdiction, the parties were initially ordered to file a written statement showing cause as to why this matter should not be dismissed for lack of authority to review the Grant Officer's action. (Order at 3). In response, the Complainant argues that the finality of a finding of non-responsiveness constitutes a final determination under the regulations. (Response at 3).

Conversely, Respondent submits that the Grant Officer never issued a final determination on the merits of Complainant's application because the application was incomplete and was therefore returned as non-responsive. (Answer at 5). Consequently, Complainant did not satisfy the requirements to be considered an applicant, and its application was returned without a final merits determination.

I find that the incomplete application precluded Complainant from being an applicant and therefore precluded a final determination on the application from the Grant Officer. Both parties agree that Complainant's application lacked a Budget Narrative at the time of the submission deadline which was an application requirement under FOA-ETA-17-05. (Response at 6; Answer at 2). Not meeting the requirements of the FOA, the Complainant's application was returned prior to the merits review stage, and therefore did not receive a final determination for OALJ to review.

After considering the regulations and the arguments submitted by the parties, I find that OALJ does not have jurisdiction to review an ETA Grant Officer's decision to return a grant application as non-responsive. Under 20 C.F.R. § 683.800, OALJ has jurisdiction only to review final determinations not to award Federal financial assistance to an applicant in WIOA cases. Because Complainant did not submit all documentation required by the FOA, it is not an "applicant" under the regulations and, as such, never received a final determination from the Grant Officer.

Because there is no final determination to review, the undersigned is precluded from further review of this matter.

ORDER

In light of the foregoing, it is hereby ORDERED that this matter is DISMISSED.

SO ORDERED:

STEPHEN R. HENLEY
Chief 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. § 683.830. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

If filing paper copies, you must file an original and four copies of the exceptions with the Board, together with one copy of this decision. If you e-File your exceptions, only one copy need be uploaded.

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. § 683.830; 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. § 683.830(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. § 683.830(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. § 683.830(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. § 683.830(b).