

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 03 December 2020

Case No: 2020-WIA-00005

In the Matter of:

AUXILIUM MANUS DEO CORP.

Complainant,

v.

**EMPLOYMENT AND TRAINING ADMINISTRATION,
UNITED STATES DEPARTMENT OF LABOR,**

Respondent.

ORDER VACATING DECISION DISMISSING APPEAL

This matter involves an application for grant funding under the Homeless Veterans' Reintegration Program, the Incarcerated Veterans' Transition Program, and the Homeless Female Veterans and Veterans with Families Program (collectively, "HVRP"), authorized by 38 U.S.C. §§ 2021, 2021A, and 2023.

On March 27, 2020, the Employment and Training Administration, U.S. Department of Labor ("Respondent"), opened a Funding Opportunity Announcement ("FOA") for HVRP, FOA-VETS-20-01, with a closing date of April 27, 2020. In response to this funding opportunity, Auxilium Manus Deo Corporation ("Complainant") submitted a grant application on April 27, 2020.

On May 12, 2020, Respondent, through a Grant Officer, sent a letter to Complainant stating that its application for funding did not meet all of the screening criteria listed in the funding opportunity announcement. The letter informed Complainant that "the application will not move forward through the merit review process and will not be considered for funding."

By letter dated May 18, 2020, and addressed to the Chief Administrative Law Judge, Complainant requested "a hearing with the Grant Officer, Kia Mason, in appeal of the decision that our application will not move forward through the merit review process and will not be considered for funding."

Because it was unclear if the Office of Administrative Law Judges ("OALJ") had jurisdiction to hear the appeal, the undersigned issued a *Notice of Docketing and Order to Show Cause* ("Order") on August 25, 2020. The Order instructed Complainant to confirm whether it

disputes that its grant application failed to meet the screening criteria of the FOA; and to show cause why the case should not be dismissed as a matter of law because OALJ lacks authority to review the Grant Officer's action in this case. On September 25, 2020, Complainant submitted a response to the Order ("Response"). On October 26, 2020, the Grant Officer, through counsel, submitted *Motion to Dismiss and Answer to Auxilium Manus Deo's Response to Order to Show Cause* ("Motion to Dismiss"). Complainant did not respond to the Motion to Dismiss. Accordingly, on November 30, 2020, I issued a *Decision and Order Dismissing Appeal for Lack of Jurisdiction* ("Decision").

On December 2, 2020, counsel for Respondent provided a written explanation of why it "would not object to allowing Complainant opportunity to provide a response to the Grant Officer's Motion to Dismiss if the OALJ chooses to grant such an equitable remedy to Complainant." Respondent explains that after it filed its Motion to Dismiss:

Complainant reached out to me and asked, among other things, if the decision was final. I responded that no, now we wait to hear from the ALJ. I mistakenly believed that there was no further action to take prior to receiving further instruction or a decision from the ALJ, and I had wanted to respond to the Complainant, realizing the Complainant had some confusion about what I had filed (asking if it was final). I did not purposefully intend to discourage the Complainant from responding to my motion; I erred in thinking that there was no further action to take prior to receiving notification or decision from the ALJ.

Judge Henley's Order issued on November 30 granted our Motion to Dismiss, noting that the Complainant had not responded to "the Motion to Dismiss" within 14 days under 29 CFR 18.33. However, considering that the complainant is *pro se* and the interaction with me, they may have been expecting a decision based on their show cause motion while being unaware that they could file a response to our motion. We did not file the government's motion with intent to confuse the process.

Complainant replied that "if given the opportunity," it would respond to the Motion to Dismiss.

Given these facts, I find it appropriate to allow Complainant additional time to file a response to Respondent's Motion to Dismiss.¹

¹ The presiding ALJ retains jurisdiction after issuing a decision and order "to dispose of appropriate motions, such as a motion to award attorney's fees and expenses, a motion to correct the transcript, or a motion for reconsideration." 29 C.F.R. § 18.90.

ORDER

Accordingly, in light of the foregoing, my November 30, 2020 Decision is hereby **VACATED. Complainant has thirty (30) days from the date of this Order to file a response to Respondent's Motion to Dismiss.**²

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

² Given the difficulties in receiving mail at OALJ's offices due to the COVID-19 pandemic, Complainant should follow the instructions at https://www.dol.gov/agencies/oalj/FILING_BY_EMAIL to file a response with the undersigned at OALJ-Headquarters-DC@dol.gov. **Failure to follow these instructions and requirements may result in rejection of the email filing.** Information on the new system for electronic filing, set to launch on Monday, December 7, can be found here: <https://www.dol.gov/agencies/oalj/EFS>.