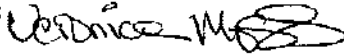


AWI Order No.2004-03-00859 Date: 6-9-04
FILED
Agency for Workforce Innovation
AGENCY CLERK
Veronica Moss, Agency Clerk
By: 

AGENCY FOR WORKFORCE INNOVATION
An Executive Agency of the State of Florida

In Re: PATRICIA VILLOLDO,
Appellant,
and,

AWI Case No.: 2004-03-00859

SOUTHFLORIDA WORKFORCE,
Appellee.

**AGENCY DECISION ON APPEAL FROM REGIONAL
WORKFORCE BOARD DECISION**

BACKGROUND

This matter has come before the undersigned pursuant to the Workforce Investment Act of 1998 (WIA), as codified at 29 United States Code (USC), sections 2802 et seq., the applicable federal regulations as contained in 20 Code of Federal Regulations (CFR), part 652 et seq., and the Florida Workforce Innovation Act, as contained in Chapter 445, Florida Statutes.

The Workforce Investment Act is the federal employment and training initiative, designed to increase occupational skills, improve the quality of the workforce, reduce welfare dependency and enhance the productivity and competitiveness of the national economy. The program is implemented through the federal funding provided for the workforce systems in the states. The Florida legislation parallel to the federal program is known as the Workforce Innovation Act.

WORKFORCE ENTITIES AND THE PARTIES

The Agency for Workforce Innovation (AWI) as created by Section 20.50, Florida Statutes, is the grant recipient of federal workforce funds and the state entity responsible for the administration of workforce policy as established by Workforce Florida, Inc.

South Florida Workforce, (SFW) is the regional workforce board (RWB) for the state Region 23, chartered by Workforce Florida, Inc., as required by Section 445.004 (11), Florida Statutes. The local boards are responsible for the development of the local workforce plan and generally coordinating workforce activities. The workforce services are provided through “One-Stop” centers located throughout the state, in cooperation with “Partner” entities, which include required partners that carry out various federal programs (20 CFR §662.200), and additional optional partners. The One-Stop centers are designed to provide comprehensive employment and training and human services within the same location. The One-Stop operators coordinate services within the local centers, as provided in 20 CFR 662.400 (c). SFW operates numerous One-Stop centers within its workforce system. SFW has the authority to designate One Stop center operators in accordance with Section 445.009(2)(b), Florida Statutes, which requires that such designated entities be eligible to provide services under any state or federal workforce program that is a mandatory or discretionary partner in the region’s One-Stop delivery system.

Workforce Florida, Inc., (WFI), as created by Section 445.004, Florida Statutes, is the workforce policy organization for Florida, with oversight responsibility over AWI and the RWBs.

JURISDICTION

The WIA section 181 (c) and applicable regulations in 20 CFR, part 667, subpart F, require that the State and each local area adopt a procedure for dealing with grievances and complaints. As described in section 667.600 (b) (1) of 20 CFR, the local procedures are required to accommodate the grievances and complaints of participants and other interested parties affected by the local Workforce Investment System. In the present case, Ms. Villoldo filed a grievance at the local level contesting the denial of service from SFW. Because Ms. Villoldo was not satisfied with the decision made at the local level, she appealed to the State, as provided in 20 CFR 667.600 (c). The present matter is being

conducted by the State in its review capacity, as provided in the State's grievance procedures promulgated as rule chapter 60BB-1, Florida Administrative Code.

The following designations will be used herein:

(SFW – page number) - the record submitted by SFW

(V – page number) - the record submitted by Ms. Villoldo

STATEMENT OF THE CASE

This case began when Ms. Villoldo sought workforce services from SFW. She was initially approved for training while she was receiving unemployment insurance. When Ms. Villoldo sought the training at a later date, she was determined ineligible since she had obtained employment and did not qualify for employed worker training. Ms. Villoldo filed an appeal with SFW who rendered a denial letter and provided Ms. Villoldo with the right to appeal the decision to AWI. Ms. Villoldo filed her appeal with the AWI Office of the General Counsel via e-mail on March 19, 2004.

FINDINGS OF FACT

Based upon review and consideration of the documentation and written arguments submitted by the parties, the following have been determined to be the relevant facts.

1. In May 2003, Ms. Villoldo filed for unemployment insurance because she was displaced from her job at HBO Latin America. At the Perrine One-Stop, she was approved for a re-training program – Part -time Generic Nursing Program at Miami Dade Community College. (V. 011, SFW 053)
2. Ms. Villoldo was also approved for supportive services. She received three (3) gas cards. (V. 011, SFW 053)
3. Ms. Villoldo informed her case manager that she had just paid for summer classes, but was not going to be able to start in the re-training program until next January, because she was in the process of paying back a school loan. Ms. Villoldo was told by her case manager that this was not a problem since she was approved in the system. (V. 011, SFW 054)
4. In October 2003, Ms. Villoldo contacted the Perrine One Stop to learn that ACS had lost the

contract and her file had been transferred to the company that had taken over the contract. After several attempts, Ms. Villoldo's file was found in the supportive system. Ms. Villoldo's new case manager could not re-qualify her since she was currently working and made too much money. (V. 012, SFW 054)

5. Ms. Villoldo spoke with a Theresa Chester and Ms. Chester's supervisor, Lawrence Suran, who tried to help her. Mr. Suran informed Ms. Villoldo that she would need to file a written appeal and set this for an appeal hearing. In March, Ms. Villoldo called Ms. Chester to see if a date had been set for the hearing, but Ms. Chester informed her that a decision had been made to deny her request. (V. 012)

6. On January 27, 2004, Ms. Villoldo filed a written grievance form to SFW. (V. 012, SFW 053 054)

7. By letter dated February 26, 2004, SFW stated it was willing to reimburse Ms. Villoldo for courses she had taken at Miami Dade Community College after she provided certain documentation. The letter also states that she had not met the conditions for continued training as an employed participant. Employed participants can only receive training if they need training to retain their employment or if the training will result in the participant attaining self-sufficiency. (V. 019, SFW 025)

8. Ms. Villoldo is unhappy with the decision and the fact she was not given the chance to address her issue with anyone. Ms. Villoldo never requested reimbursement of costs at Miami Dade Community College. (V. 012)

9. Final Guidance issued by AWI dated November 25, 2003 requires that employed workers may receive training services by documenting that they are in need of services in order to obtain or retain employment that allows self sufficiency. Employed workers that meet the local definition of self-sufficiency, but who need services in order to retain their self sufficient employment may be served if documentation is obtained from the employer either verbally or in writing that the employee will not be retained unless additional training or services are received. (SFW 027)

10. Grievances covered by SFW Grievance Procedures include any interested party adversely affected by a decision or action by the SFW System, including decisions by One-stop partners and service providers in connection with the WIA Title I program administered by SFW. Additionally, the grievance procedures provide that grievances related to eligibility requirements and prioritization criteria are not grievances covered by the procedures unless there is a factual dispute over the applicable criteria. (SFW 042)

11. The SFW grievance procedures have an informal resolution process where the grievant talks with the case manager; then meets with the lead case manager and then meets with the One Stop Center Manager. These meetings can be bypassed by filing a written grievance form to request an Informal Resolution Meeting with the Customer Service Unit. After the informal resolution, the grievant is asked to sign a request for formal hearing by the Customer Service Unit, if they wish to pursue the grievance. The procedures provide for appointment of a hearing officer and notice provisions. (SFW 040-052)

CONCLUSIONS OF LAW

Rule 60BB-1.004, Florida Administrative Code, requires that participants affected by the local One-Stop system have the right to file a grievance and complaint. The grievance and complaint shall be filed at the local level using the procedures established by the individual RWB.

Rule 60BB-1.005, Florida Administrative Code, requires that the local workforce board to schedule a hearing after the RWB has received the complaint.

Ms. Villoldo complains that SFW did not provide her an opportunity to “address her issues”. The record shows that Ms. Villoldo was provided an opportunity to informally resolve her training eligibility issue with her case manager and the case manager’s supervisor. Ms. Villoldo however, was not able to meet with the One Stop Center Manager as provided for in the grievance procedures, although this step is not required. She was provided a written grievance form, which according to SFW grievance procedures entitled Ms. Villoldo with an Informal Resolution Meeting. An Informal

Resolution Meeting did not occur nor was Ms. Villoldo presented an opportunity to request a formal hearing.

Additionally, it is unclear from the record submitted by either party whether in fact Ms. Villoldo was contesting any of the criteria for the employed worker program established in the February 26, 2004 letter by SFW. Therefore, it cannot be determined whether the grievance is of a nature covered by the SFW grievance procedures. It is also unclear in the record whether Ms. Villoldo was initially qualified under the dislocated worker program and whether her obtaining employment while in that program made her ineligible for service. SFW appears to be applying the employed worker criteria as if she were a new applicant. Furthermore, there appears to be an issue over the reimbursement of tuition paid for classes at Miami Dade Community College.

WHEREFORE, the undersigned finds:

1. The Appeal is not ripe for review by the Agency since a local hearing or a meeting was not conducted in accordance with the SFW grievance procedures.
2. This matter is dismissed and remanded for SFW to conduct further proceedings consistent with its grievance procedures.

DONE and ORDERED, this 8th day of June 2004, in Tallahassee, Florida.


Susan Pareigis, Director
Agency for Workforce Innovation

NOTICE OF RIGHTS TO APPEAL
FEDERAL

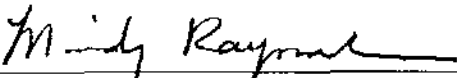
This Agency Decision is rendered pursuant to Workforce Investment Act regulation 20 CFR 667.600(c)(4) and Agency for Workforce Innovation rule Chapter 60BB- 1. A party adversely affected by this decision may petition the Secretary of the United States Department of Labor within 60 days of receipt of this decision. Any appeal must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 2000 Constitution Ave., N.W., Frances Perkins Building, Washington, DC 20210, Attention ASET. A copy of the appeal must be simultaneously provided to the ETA Regional Administrator, U. S. Department of Labor, ETA, Atlanta Federal Center, 61 Forsyth Street, S.W., Room 6M12, Atlanta, GA. 30303 and to the AWI, Office of the General Counsel, 107 E. Madison Street, Caldwell Building, MSC # 150 Tallahassee, Fl. 32399-4128.

STATE

THIS DECISION CONSTITUTES FINAL AGENCY ACTION, pursuant to Section 120.68(2), Florida Statutes, Judicial Review of this proceeding maybe instituted by filing a notice of appeal in the district court of appeal in the appellate district where the Agency maintains its headquarters or where a party resides. Such notice of appeal must be filed with the district court of appeals within thirty (30) calendar days of the date this order is filed in the Official Records of the Agency for Workforce Innovation, as indicated in the certification of the Agency Clerk, or further review will be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was provided by U. S. Mail, this 8th day of June 2004, to Ms. Patricia Villoldo, 15522 SW 60th Street, Miami, Florida 33193; and Mr. Frank Batista, Ph.D. EO Officer, 7300 Corporate Center Drive, Suite 500, Miami, FL 33126-1234.



Mindy Raymaker, Acting General Counsel
Florida Bar No.: 0972789
Agency for Workforce Innovation
The Caldwell Building, MSC # 150
Tallahassee, Florida 32399-4128
Telephone: (850) 245-7150
Telecopier: 850/921-3230