

AWI Order No. 2005-04-01012 Date: 5-3-05

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: NIDIA ARIAS,  
Appellant,

vs.

AWI Case No.: 2005-04-01012

SOUTH FLORIDA WORKFORCE.,  
Appellee.

---

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

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.

**PRELIMINARY STATEMENT**

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 coordinate 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 Regional Workforce Boards (“RWB”).

### **JURISDICTION**

The Workforce Investment Act, 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. Arias filed a grievance at the local level contesting the denial of service from SFW. Because Ms. Arias 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 under Chapter 60BB-1, Florida Administrative Code.

## STATEMENT OF THE CASE

This case began when Ms. Arias sought workforce services from SFW. She was initially approved for training while she was receiving unemployment insurance. When Ms. Arias sought the training at a later date, she was determined ineligible since she had obtained employment and did not qualify for employed worker training.

## FINDINGS OF FACT

Upon review and consideration of the hearing request and other documentation, the following has been determined:

1. Ms. Arias filed an appeal with SFW who rendered a denial letter that provided Ms. Arias with the right to appeal the decision to AWI, within 30 days from the date she received the denial letter. (Denial letter attached as Exhibit "A").
2. Ms. Arias received SWF's decision letter on March 25, 2005. (Signed receipt of certified letter attached as Exhibit "B").
3. Ms. Arias' hearing request was mailed on April 25, 2005, (petitioner's post-marked envelope attached as Exhibit "C") however it was not received (filed) with the Agency for Workforce Innovation until April 27, 2005. (Date stamped hearing request attached as Exhibit "D").
4. Because Ms. Arias' hearing request was filed after April 25, 2005, her request was untimely and she has, in affect, waived her right to a hearing before this agency.

## CONCLUSIONS OF LAW

5. 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 must be filed at the local level using the procedures established by the individual RWB.
6. Rule 60BB-1.005, Florida Administrative Code, requires local workforce boards to schedule a hearing upon receiving a complaint.

7. Rule 60BB-1.006(1) provides in part that, after a hearing, if the grievant or complainant is "dissatisfied with or has been adversely affected by a decision", he or she may <sup>1</sup>file an appeal with AWI "within thirty (30) calendar days of receipt of the RWB's decision."

8. In order to be timely, a notice of appeal must be filed with the appropriate court, or as in this case, agency, within the required time, and merely mailing the notice or having the notice placed in a post office box within the required time period is not sufficient. See Raysor v. Raysor, 706 So.2d 400, 401 (Fla. 1st DCA 1998); see also Millinger v. Broward County Mental Health Div. & Risk Mgmt., 672 So.2d 24, 26 (Fla.1996) (noting that "[i]t is a settled rule of law that mailing, as opposed to filing, a notice within the thirty-day filing period is insufficient to preserve appellate rights.")

9. A "late filing is a defect no one can correct, not even the court." See Hawks v. Walker, 409 So.2d 524 (Fla. 5th DCA 1982). See also, Cann v. Dept. of Children and Family Servs., 813 So.2d 237, 238-39 (Fla. 2d DCA 2002)(agency dismissal of hearing request two days past deadline affirmed).

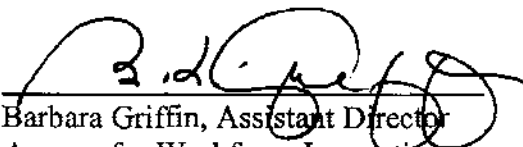
10. Section 120.59(2)(c), Florida Statutes provides that "a petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed."

11. It conclusively appears from the face of the petition, since it was untimely filed, that the defect cannot be cured.

**WHEREFORE**, the undersigned finds:

1. Ms. Arias has waived her right to a hearing in this matter.
2. The matter is dismissed

**DONE and ORDERED**, this 3 day of May 2005, in Tallahassee, Florida.

  
Barbara Griffin, Assistant Director  
Agency for Workforce Innovation

FEDERAL

**NOTICE OF RIGHT TO PETITION THE SECRETARY OF THE UNITED STATES  
DEPARTMENT OF LABOR**

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 # 110 Tallahassee, Fl. 32399-4128.

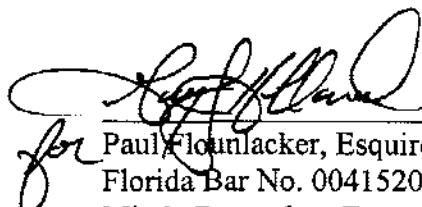
STATE

**NOTICE OF RIGHT TO APPEAL TO DISTRICT COURT OF APPEAL**

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. Certified Mail, this 3<sup>rd</sup> day of May 2005, to Ms. Nidia Arias, 3520 S.W. 113<sup>th</sup> Place, Miami, Florida 33165, CERTIFIED MAIL - 7003 1680 0002 4601 1399 and Ms. Edith Humes-Newbold, Director, South Florida Workforce, 7300 Corporate Center Drive, Suite 500, Miami, FL 33126, CERTIFIED MAIL - 7003 1680 0002 4601 1382.

  
for Paul Flounlacker, Esquire FBN 0284165  
Florida Bar No. 0041520  
Mindy Raymaker, Deputy General Counsel  
Florida Bar No.: 0972789  
Agency for Workforce Innovation  
The Caldwell Building, MSC # 150  
Tallahassee, Florida 32399-4128  
Telephone: (850) 245-7110  
Telecopier: 850/921-3230