

AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals
MSC 350WD CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

COMPLAINANT:

Employer Account No. - No Employer
Number
JOEANNE M THOMAS-JOSEPH
HEFTZIVAH GROUP TITLE
3108 6TH STREET WEST
LEHIGH ACRES FL 33971

FO No. 10-001-FOI

DOCKET NO. 2010-1054L

RESPONDENT:

State of Florida
Agency for Workforce Innovation
Office of General Counsel
107 East Madison Street MSC 110
Tallahassee, Florida 32399-4128

NOTICE OF DECISION OF APPEALS REFEREE

APPEARANCES: COMPLAINANT & RESPONDENT

IMPORTANT – APPEAL RIGHTS: This decision will become final unless within twenty (20) working days after the certified date of receipt of the decision, the Complainant or Respondent files an appeal to the Regional Administrator, Helen Parker, U.S. Department of Labor/ETA, Atlanta Federal Center 61 Forsyth Street Room 6M12, Atlanta, Georgia 30303.

Background: The Agency for Workforce Innovation (AWI) is responsible for the operation of statewide public employment services. The public employment services, operated national-wide by the several states, are federally financed via the Wagner-Peyser Act, as codified at 29 USCA 49 et seq. The services include the listing of jobs for the employees and job searches and placements for workers.

The federal regulations applicable to the employment services require each state to have in place a "Job Service Complaint System." As an employer who submitted a job order to the State's job service agency, upon failure of the job service agency to post her job orders, Ms Thomas-Joseph exercised her right to invoke the complaint process. Because the matter was not resolved either at the regional level or the state level, Ms Thomas-Joseph requested a hearing as provided in 20 Code of Federal Regulations 658.417.

This matter comes before the undersigned Special Deputy pursuant to the Complainant's protest of the Respondent's determination dated October 22, 2009.

After due notice to the parties, a telephone hearing was held on January 7, 2010.

Issue: Whether the state job service program has the authority to discontinue services to the state job listing system for employers. Code of Federal Regulations Title 20 Section 651. 10.

Findings of Fact: The Complainant JoeAnne M. Thomas-Joseph submitted four job orders to Employ Florida Marketplace ("EFM") beginning on or about September 22, 2009. The first job order, Job Order No. 9432738, states that the employer is "JoeAnne M. Thomas-Joseph Heftzivah Group," and the job title is "Business Operations Specialist." The job description states JMTJ Heftzivah Group "provides 'Business Networking' opportunities for adults who are willing to be trained to use existing network

marketing strategies to develop local territories.” It further states that an applicant must “recruit clients or small Business Operation trainees.” It states that the minimum salary is \$70.00 per year. The second job order, Job Order No. 9432761, states that the employer is “JoeAnne M. Thomas-Joseph Heftzivah Group,” and the job title is “Business Operation Advisor (5links).” It states that the minimum salary is \$10.00 per year, and asks “Are you willing to recruit clients for small Business Operation Trainee’s?” The third job order, Job Order No. 9436558, states that the employer is “JoeAnne M. Thomas-Joseph Heftzivah Group,” and the job title is “Demonstrators and product Promoters.” The job description states JMTJ Heftzivah Group “provides ‘Business Networking’ opportunities for adults who are willing to be trained to use existing network marketing strategies to develop local territories.” It further states that an applicant must “recruit clients or small Business Operation trainees.” The minimum salary listed is \$7.00 per year. The fourth job order, Job Order No. 9437913, indicates that the job title is “Demonstrators and Product Promoters.” The employer name provided is “JoeAnne M. Thomas-Joseph Heftzivah Group.” The job description states that JMTJ Heftzivah Group “provides ‘Business Networking’ opportunities for adults who are willing to be trained to use existing network strategies to develop local territories.” The job description also indicates that the salary is “commission-base only to start.”

The Agency for Workforce Innovation (AWI) contacted Ms. Thomas-Joseph, to determine if prospective employees would actually be hired by her company. Ms. Thomas-Joseph stated that she did not hire, supervise, pay or fire employees. Ms. Thomas-Joseph further stated that she did not issue W-2 or 1099 forms since her company did not hire employees other than her own children. Ms. Thomas-Joseph also stated that the job applicants would be hired by two other companies doing business as Adryss International and 5Links. The applicants would be required to attend unpaid training, be required to pay a franchise fee and make a capital investment in order to be hired. The applicants would also be required to attend unpaid training provided by the Complainant and if hired by Adryss International or 5Links, they would be paid commission only without a minimum wage guarantee.

The Agency decided that the employer JoeAnne M. Thomas-Joseph Heftzivah Group is not an employer, as defined in Code of Federal Regulations Title 20 Section 651.10 and that the four job orders posted did not comply with the EFM Terms of use. The Agency deleted the four posting from the EFM system.

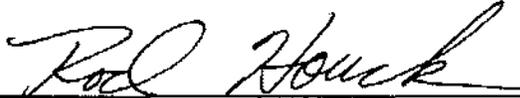
Conclusions of Law: Code of Federal Regulations Title 20 Section 651.10 states; Employer, means a person, firm, corporation or other association or organization (1) which currently has a location within the United States to which U.S. workers may be referred for employment and which proposes to employ a worker at a place within the United States and (2) which has an employer relationship with respect to employees under this subpart as indicated by the fact that it hires, pays, fires, supervises and otherwise controls the work of such employee.

The record shows that the Complainant was denied job postings on the EFM system. The record further shows that the Agency’s EFM system is governed by Federal Law that determines bona fide employer-employee relationships. The record is clear that the Complainant’s job listings do not meet the employer-employee standards since the Complainant does not hire, pay, fire, supervise or otherwise control the work of an employee. Thus, the Complainant’s job postings do not meet the Federal Law criteria and the job listings have been properly deleted from the Agency’s EFM system.

Decision: The determination dated October 22, 2009, is AFFIRMED.

Respectfully submitted on January 15, 2010.





ROD HOUCK, Special Deputy
Office of Appeals