

AWI Order No.: 2006-12-01109

Date: 4-23-07

FILED

Agency for Workforce Innovation

AGENCY CLERK

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By: 

**AGENCY FOR WORKFORCE INNOVATION**

An Executive Agency of the State of Florida

In Re: ALMYR (AL) GUIMARAES,  
Appellant,

vs.

AWI Case No.: 2006-12-01109

SOUTH FLORIDA WORKFORCE BOARD,  
Appellee.

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

**PRELIMINARY AND JURISDICTIONAL STATEMENT**

This matter has come before the undersigned pursuant to the Workforce Investment Act of 1998 (WIA), as codified at 29 United States Code (U.S.C.), sections 2802 *et seq.*, the applicable federal regulations as contained in 20 Code of Federal Regulations (C.F.R.), part 652 *et seq.*, the Florida Workforce Innovation Act, as contained in Chapter 445, Florida Statutes, and Chapter 60BB-1, Florida Administrative Code. In the present case, Mr. Guimaraes filed a grievance with the local Regional Workforce Board (RWB) alleging that his application for employment services “came to a halt” because he refused to sign a consent form allowing the local board (South Florida Workforce Board (SFW)) and Homestead Career Center (HCC), his local One-Stop center, to release information about him, including his social security number, to third parties. Mr. Guimaraes also raised other issues about his concern regarding the confidentiality of his personal information provided to the HCC and SFW and his rights under the federal Privacy Act of 1974 and the provisions of section 445.010(1)(c) and (2), Florida Statutes.

Because Mr. Guimaraes was not satisfied with the decision and actions made at the local level, he appealed to the State, as provided for in 20 C.F.R. section 667.600 (c) and Rule 60BB-1.006(1), Florida Administrative Code.

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 federal funding provided to the workforce systems in the states. The Florida legislation that parallels the federal program is known as the Workforce Innovation Act of 2000. *See* Chapter 445, Florida Statutes.

The Agency for Workforce Innovation (Agency), 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. (WFI). WFI, as created by section 445.004, Florida Statutes, is the workforce policy organization for Florida, with oversight responsibility of both the Agency and the regional workforce boards.

South Florida Workforce is the regional workforce board for Florida Region 23, chartered by WFI, as required by section 445.004(11), Florida Statutes, and is responsible for initiating state and federally funded workforce development programs in Miami-Dade and Monroe counties. SFW, as a local board, is also responsible for the development of the local workforce plan and for 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 implement various federal programs and additional optional partners. *See* 20 C.F.R. 662.200.

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 C.F.R. 662.400(c). SFW operates numerous One-Stop centers within its workforce system. The Homestead Career Center is the One-Stop involved in this case. South

Florida Workforce 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. "Arbor Employment and Training" is the service provider at the HCC.

Section 181(c) of the Workforce Investment Act and applicable regulations contained in 20 C.F.R. 667 Subpart F, require that the State and each local area to adopt a procedure for dealing with grievances and complaints. Local procedures are required to include accommodations for grievances and complaints of participants and other interested parties affected by the local workforce investment system. *See* 20 C.F.R. 667.600(b)(1).

The Agency conducts this review of Mr. Guimaraes' appeal in accordance with the State's grievance procedures promulgated as rule in Chapter 60BB-1, Florida Administrative Code.

The record consists of two (2) binders. Citations to the record are as follows:

Binder labeled "South Florida Administration Office Request for Grievance Hearing Supporting Documentation Section 1": S.1, followed by page number;

Binder labeled "Homestead Career Center Request for Grievance Hearing Supporting Documentation Section 2": S.2, followed by relevant Tab date.<sup>1</sup>

### **FINDINGS OF FACT**

Based upon review of the record, the Agency finds the following relevant facts:

1. In July 2006, Mr. Guimaraes sought services from the Homestead Career Center for paralegal training and met with his WIA advisor on July 27, 2006.<sup>2</sup> Mr. Guimaraes provided the documents that were requested of him; however, he declined to give his consent to the release of his personal information by SFW, HCC, or Arbor, to third parties. Mr. Guimaraes stated that he did not

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<sup>1</sup> Section 1 of the record is consecutively paginated and separated by tabs according to month, date, and year. Section 2, however, is not consecutively paginated. Section 2 tabs are organized by month, day, and year; however, in certain instances the record contains more than one tab for the same month, day, and year. Therefore, duplicate tabs are cited to herein according to the order in which they appear. For example, "First Tab labeled 1/10/07."

<sup>2</sup> Mr. Guimaraes previously sought services in 2003.

want his personal information released and he wanted assurances in writing that his social security number would not be disclosed. (S.1, 130-132; 133).

2. Through a series of letters and facsimile transmissions, Mr. Guimaraes made various requests of HCC and SFW and lodged his complaints associated with the process involved in the services delivered to him. Specifically, his concerns related to the safeguarding of his personal confidential information.

3. On August 2, 2006, Mr. Guimaraes sent a letter to Diana Gomez, his WIA lead career advisor, regarding the July 27, 2006, meeting and stated that he was concerned about release of his personal information, including the potential release of his social security number to third parties. He also requested certain safeguards be imposed so that his information would not be disclosed. (S.1, 119-122).

4. On August 10, 2006, Mr. Guimaraes sent a letter to the Lilliam Ventura, HCC One-Stop Center Director, requesting a meeting "to discuss the next steps in having his application approved." (S.1, 112). He sent a subsequent email on August 22, 2006, stating that he had yet to receive an appointment. (S.1, 111).<sup>3</sup>

5. On August 24, 2006, Julinel Plaza, Quality Assurance Manager, sought guidance about how to provide services to a customer who requests non-disclosure of his or her social security number. (S.1, 108). Due to hurricane weather, resolution of this issue was postponed. (S.1, 107).

6. On September 6, 2006, Mr. Guimaraes faxed a letter to the SFW customer service unit to "initiate grievance procedures." In his request, he raised issues concerning his rights under the

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<sup>3</sup> In a separate letter dated August 10, 2006, to Diana Gomez, WIA lead advisor, Mr. Guimaraes requested the following: 1) copies of the documents he signed for his 2006 application; 2) copies of documents he provided for his file and used to evaluate his qualifications to participate; 3) copies of documents electronically entered into his file relating to his WIA application for the years 2003 and 2005-2006; 4) copies of letters sent by him to SFW entered into his file for 2003; 5) copies of any faxes he sent to SFW entered into his 2003 file; 6) copies of letters and faxes sent from SFW to him in response to his letters and faxes; 7) copies of all notations and memoranda relating to his 2003 application; 8) copies of notes relating to resolving certain actions concerning his 2003 application; and 9) copies of notes by WIA advisors for 2003 and 2005-2006.

federal Privacy Act and the provisions of section 445.010(1)(c) and (2), Florida Statutes. The letter also stated the following: 1) his objection to the requirement of signing a consent allowing SFW and HCC to release information about him, including his social security number, to third parties; 2) his objection to being asked to submit the reasons he declined to sign the consent form in writing for Ms. Gomez's review; 3) the fact that he was scheduled to have a follow up appointment on August 2, 2006, which did not occur; 4) he requested other appointments that were not made; and 5) he had a right to deny signing a consent to release his social security number. (Specifically, he stated, "[t]he One-Stop/SFW procedures make it a requirement that I consent to have my information released as a condition of receiving assistance. As such my application has been stalled.") (S.1, 69-73).

7. On September 7, 2006, the One-Stop was advised that customers are entitled to refuse disclosure of their social security number and still receive WIA services. (S.1, 106). The One-Stop also sought technical assistance regarding the issuance of tuition vouchers without a social security number (S.1, 97) and other related matters (S.1, 98); (S.2, Tab 9/25/06; S.1, 56; S.2, Second Tab labeled 10/3/06). A pseudo social security number was issued for Mr. Guimaraes on September 12, 2006. (S.2, Tab 9/15/06).

8. On September 12, 2006, Mr. Guimaraes faxed a letter to Mr. Sergio Perez, Customer Service Representative, stating that his application had been stalled since July because he refused to consent to release his personal information to third parties, and requested copies of the privacy policy and procedures as well information sharing agreements. He also stated that he had trouble getting a meeting scheduled with the One-Stop. (S.1, 61).

9. Mr. Guimaraes did not attend a September 13, 2006, appointment scheduled with his case manager. (S.2, Tab 9/13/06). However, on the same date, he signed a release of his informal grievance dated September 6, 2006. Such a release indicates that the parties have come to a resolution. Mr. Guimaraes also received a voucher for tuition. (S.1, 87)(S.2, Fourth Tab labeled 9/14/06). Mr. Guimaraes rated his satisfaction of the treatment by center staff as "very satisfied." (S.1, 88). Also on

September 13, 2006, Mr. Guimarraes emailed Ms. Plaza stating that he had not received a copy of the SFW privacy policy that he requested on August 15, 2006. (S.1, 90).

10. In another letter dated September 13, 2006, Mr. Guimaraes wrote to Mr. Perez thanking him for moving his application along.<sup>4</sup> He also stated that although he signed a release of his informal grievance, he was not provided a copy of the written grievance settlement agreement that should have accompanied the release.<sup>5</sup> He asked for a letter documenting that he provided his correct social security number, but that at his request, he chose not to have it released. He also requested that a note be placed in the system indicating that his social security number was not to be released without his permission and for confirmation that the note was placed in his file. Further, he requested a copy of the privacy policy and data sharing agreements. (S.2, First Tab 9/14/06).

11. On September 18, 2006, Mr. Guimaraes submitted a written request to SFW for a formal hearing. He lodged complaints regarding SFWs failure to meet the following requests: 1) he requested more than just the use of a pseudo number for his social security number-- his concerns also included the non-disclosure of his social security number to entities outside SFW and the One-Stop center and he requested that a note be added to the system stating that pursuant to his own request he did not authorize release of his social security number or additional personal information; 2) he had requested that a copy of the system note be printed and provided to him; 3) he requested a copy of SFW and One-Stop privacy policies; 4) he requested a copy of the information sharing agreement signed by training partners regarding the collection and sharing of confidential information; 5) he requested transportation assistance for training and work purposes; 6) he requested the name of the person that needed to be contacted in order to expedite his late registration; and 7) he requested a copy of the written grievance settlement agreement which he asserted resulted in a lack of written assurances

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<sup>4</sup> Mr. Guimaraes received a tuition voucher on September 13, 2006. (S.1, 87).

<sup>5</sup> SFW policy requires that a grievant be provided a copy of the signed grievance agreement. (See S.2, Exhibit Tab B.).

and accountability to him that his information would not be released. He further stated that he would return his tuition voucher. (S.1, 65-68) (S.2, Second Tab labeled 9/18/06).

12. On September 28, 2006, Mr. Guimaraes wrote a letter to his career advisor stating that he received a copy of the signed grievance release but did not get a copy of the grievance settlement agreement. He stated that he signed the release as a "conditional good faith action" on his part and expected to receive the other documents he had requested. Since he did not receive those documents, he stated he rescinded the release of the grievance. (S.1, 50).

13. On October 2, 2006, Frank Batista, the SFW Equal Opportunity/Disability Coordinator, sent a letter to Mr. Guimaraes acknowledging his request for a formal hearing, but stated that a "remedy package" was being assembled. (S.2, Item 34, Tab 10/2/06).

14. On October 10, 2006, Mr. Guimaraes sent a witness list to Mr. Batista and referred to two sets of interrogatories that he served in order to prepare for his formal grievance hearing. (S.1, 42-47)(S.2, Tab 10/10/06).

15. On October 12, 2006, Mr. Guimaraes faxed a letter to Mr. Batista regarding "My hearing status." (S.2, Tab 10/12/2006). In this letter, Mr. Guimaraes wrote "in view that I had [sic] received the expected documents along with the release I signed on 9/14, I rescinded the release on 9/18 and requested from the CSU<sup>6</sup> a formal hearing. And as a follow up to that you and I spoke on 9/25." He further wrote:

I was expecting to receive from your offices at the very least a copy of the AWI/SFW/Arbor privacy policy and practices memos and guidelines. Your letter to me did not include it and made no mention of it. It did state that a remedy package was being put together for me, but offered no specifics or references to what was being included as part of the remedy package. It also made no reference as to when I could expect to receive a copy of the privacy policy and guidelines. As part of my Formal Hearing Request, I did specify that I would be calling witness [sic] and presenting evidence in support of my case . . . . While a resolution prior to actually sitting down at a hearing is possible, while we get there I want to receive the information I requested in a timely manner in order to avoid additional delays that will eventually pop up. By receiving what I requested now instead of later I will have answers of why I have to

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<sup>6</sup> "Customer Service Unit".

fight over the same issues of privacy I did 3 and a half years ago. By naming witnesses, issuing subpoenas and interrogatories I will be receiving information that explains why a simple process that was accomplished in 3 weeks was stalled and stonewalled for almost 3 months. My application and voucher were just about done on 7/27 and when I raised my concerns over how my privacy was affected everything was halted. That is why I had to get your offices involved. Your involvement got me my voucher issued in one week, but the concerns over my privacy weren't addressed. As a result, I went to the next step – the hearing request.

16. On October 24, 2006, Mr. Guimaraes again sent a fax to Mr. Batista as a “follow-up” to letters dated October 10 and 12 and telephone conversations of October 12 and 18. Mr. Guimaraes stated that Mr. Batista informed him that he had instructed Ms. Plaza and Ms. Ventura to disregard his interrogatories. He also stated that he did not receive the items requested in his October 12 letter which he identified as a stamped copy of his formal hearing request, the hearing number assigned to his case, and a sample heading of how to style subpoenas and interrogatories. (S.2, First Tab labeled 10/24/2006).

17. A formal grievance hearing was not held. Instead, on October 24, 2006, Mr. Batista sent an email to Mr. Guimaraes in response to the October 24, 2006, fax. Mr. Batista stated:

Please be advised, that when we first spoke on the telephone on September 25, 2006 at 3:59 p.m., I specifically explained to you that **in order to expedite the process** for your benefit, I was putting together a **remedy** package which included the items you clearly outlined and asked for in your fax dated September 18, 2006. This was later confirmed in a certified letter I sent you on October 2, 2006 affirming the aforementioned. Later, during our telephone conversation on October 12, 2006, while you were visiting Ms. Julinel Plaza's office at the Homestead Career Center, I once again **reiterated** that I was finalizing the remedy package and preparing the settlement agreement to schedule you to come in to SFWIB's<sup>7</sup> main office to review the documents gathered and sign the agreement, if satisfied. Therefore, I further added, that **it was not necessary** to have staff take time to complete any interrogatory document which **was not part of this process** and you seem to have understood it, as such.

(S.1, Tab 10/27/2006)(*Emphasis in original*). Mr. Batista closed the email stating “Your settlement agreement is practically finalized and you will be contacted within the next few days to come in and review the agreement as well as, the documents gathered.”

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<sup>7</sup> SFWIB is SFW.



18. On November 6, 2006, Mr. Guimaraes responded to Mr. Batista and informed him that he had requested assistance from the Agency's deputy director for workforce services.<sup>8</sup> He also stated that he had requested a formal hearing on September 18, that he was concerned about the timeframe remaining in which to have a hearing and that he believed that his discovery deadline for the hearing had expired. He further stated that Mr. Batista's statement that there was an understanding between them to settle without a hearing was incorrect and that he was pursuing a formal hearing. (S.1, Second labeled Tab 11/6/06).

19. Mr. Batista responded *via* email and stated that he left Mr. Guimaraes a telephone message so that they could further discuss his grievance. Mr. Batista acknowledged the request for a formal hearing of September 18, 2006, and stated that there was a sixty-day window in which to resolve the matter that he calculated to end November 16, 2006. He advised Mr. Guimaraes that the settlement agreement document was finalized and under review by SFW's legal counsel. He further advised that some of Mr. Guimaraes' requests had been implemented such as "adding a note to the system and issuing a pseudo number as a substitute for the social security number." Mr. Batista stated that he would schedule a time for them to review and execute the agreement prior to November 16, 2006. (S.1, First Tab labeled 1/06/2006).

20. An informal grievance meeting was held between Mr. Guimaraes, SFW, and HCC staff on November 15, 2006. (S.1, Tab 11/21/2006; S.2, Tab 11/29/06).

21. On November 30, 2006, Rick Beasley, Executive Director for SFW, wrote Mr. Guimaraes regarding the meeting held November 15, 2006, the actions taken by SFW, and his appeal rights. (S.2, Tab 11/11/06). Mr. Beasley stated that the following actions were taken in response to Mr. Guimaraes' privacy and confidentiality concerns:

SFWIB has created a pseudo identification number to appear in your records substituting for your Social Security number on paper work provided to ensure non-disclosure of said number to entities outside of SFWIB/Career Center(s).

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<sup>8</sup> See also S.2, Tab 11/01/06.

SFWIB has added a note to the SAMS and OSMIS systems regarding non-disclosure of your Social Security number and denial of additional information to others. A copy of said notes is available to you for your records at your request.

SFWIB has written a formal letter establishing that you produced proof of your Social Security number at the time of registration but a pseudo number was created for all further agency transactions due to your concerns with the privacy issue.

SFWIB has prepared a copy of the SFWIB, AWI and Arbor privacy policy for your review.

SFWIB has made arrangements to provide you with transportation assistance for further training contingent upon the availability of funds.

SFWIB has identified the registration agent to contact in order to expedite the registration process with the training service provider.

(S.1, Tab 11/30/2006). Mr. Guimaraes was also informed that he would have to follow SFW's procedures and file a written grievance regarding any new issues he raised at the November 15, 2006, meeting if he wanted to pursue those.

22. On December 12, 2006, Mr. Guimaraes sent a request for a grievance hearing to the Agency's Office of General Counsel. (S.2, Tab 12/12/06). The Agency's Office of General Counsel responded to Mr. Guimaraes in a letter dated December 22, 2006, requesting clarification of the issues from Mr. Guimaraes. (S.2, Tab 12/22/06).

23. Mr. Guimaraes responded in a letter dated January 3, 2007, clarifying the issues and summarizing them as follows:

- 1) Local management circumvented their rules and blocked my application process until I consented to something I have an explicit right to say no to.
- 2) SFW/CSU moved my application forward without addressing my concerns.
- 3) SFW management impeded my efforts to a hearing and undermined my legal rights as outlined in 445, and FAC 60bb.

(S.1, Tab 1/10/2006).

24. On January 8, 2007, the Agency's Office of General Counsel sent an acknowledgment and notification of the appeal to Mr. Guimaraes and Mr. Beasley. (S.2, Tab 1/10/07).

25. Mr. Guimaraes was issued a new tuition voucher for paralegal studies on January 10, 2007. (S.2, Tab 11/11/07). He registered on January 11, 2007, for classes to begin February 6, 2007. (S.1, 1-5).

26. Mr. Guimaraes and SFW staff met to review documents for the instant appeal. (S.2, Tab 1/11/07).

### CONCLUSIONS OF LAW

A participant adversely affected by a decision or action within the local workforce system, including decisions by One-Stop partners and service providers, has the right to file a grievance with the RWB. *See* 60BB-1.002(2), Florida Administrative Code. The participant may appeal the local board's action if: 1) the RWB has conducted a hearing but the grievant is dissatisfied with or has been adversely affected by the decision; 2) the RWB did not hold a hearing within sixty days from receipt of the grievance; or 3) the RWB held the hearing but did not issue a decision within the mandated sixty days. *See* 20 CFR 667.600; 60BB-1.006(1), Florida Administrative Code. Local workforce grievances must be filed with the appropriate RWB using the RWB's established procedures. *See* Rules 60BB-1.002(6) ("All local workforce grievances and complaints shall be filed with the relevant regional workforce boards (RWBs) using their established procedures.") and 60BB-1.004(2) ("The grievances and complaints shall be filed at the local level using the procedures established by the individual RWB."), Florida Administrative Code.

South Florida Workforce Board's standard procedures for complaints and grievances are set forth in the SFETC<sup>9</sup> Program Directive and the "SFW Complaints and Grievance Policy." (*See* S.2, Exhibit Tab B.).

The directive provides: "[t]here are four (4) different steps you can do as part of the informal process. But remember that you can always request a formal grievance if you think the informal resolution is not working." (*See* S.2, Exhibit Tab B at page 3.) The procedures further provide:

- a. **First** talk with your Case/Career Manager/Advisor about the problem. If the problem is not resolved the **second** thing you can do informally is you may ask for a meeting with the Lead Case Manager or supervisor. The Lead Case Manager or supervisor must meet within 24 hours or the next business day if there is an intervening weekend or holiday.

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<sup>9</sup> SFETC stands for South Florida Employment and Training Consortium which was changed to SFW.

b. If the meeting with the Lead Case Manager or supervisor does not resolve the problem, the **third** step is a meeting with the One Stop Center Manager, which will be set or held 3 working days upon of the receipt of your request to meet with the Center Manager. The Lead Case Manager or supervisor will schedule this meeting.

c. If the issue is still not resolved informally, or if you wish to skip Steps A and B, then the next step in the Informal Process is that you may file a request for an Informal Resolution Meeting with the Customer Service Unit by filling out a Written Grievance Form.

(S.2, Exhibit Tab B at pages 3-4)(*Emphasis in original.*) Procedures for filing a written grievance form are provided for in the policy. The policy also provides that “[a] decision must be made within 60 days of the filing of the written grievance.”

The procedures provide further: “If the issue(s) are resolved during any of the informal meeting steps with the Customer Service Unit, the agreement reached will be written down and everyone will be asked to sign it. This will end the complaint/grievance procedure.” (S.2, Exhibit Tab B at page 4.). These procedures are consistent with the applicable administrative rules requiring the RWB to review and attempt to resolve the initial complaint informally. *See* Rule 60BB-1.004(3), Florida Administrative Code.

According to SFW’s grievance procedures, when a customer wants to pursue a grievance beyond the informal resolution procedures, the customer will be asked to sign a request for a formal hearing by the Customer Service Unit. (S.2, Exhibit Tab B). The policy, in part, provides for the following formal grievance procedures:

If the problem is not resolved through the informal meetings with the Customer Service Unit and you still want to pursue your grievance, you may request a formal Hearing on the Written Grievance Form.

When you sign a request for formal hearing:

The Customer Service Unit will immediately deliver the signed request to the Hearing Officer who will date stamp the signed request.

You and your representative, if you have one will be sent a written notice informing you of your hearing date, as well as the time and location of the hearing. The hearing will be held at the South Florida Workforce Offices unless you request that the hearing be held at your One Stop.

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[You will be notified of] [y]our right to present witnesses and to ask that the staff, your counselor, case manager and/or the supervisor or other South Florida Workforce contractor or SFW staff whom you would like to question or whose testimony you would like the hearing officer to listen to appear at the hearing. SFW will do its best to assure that the contractor or other South Florida Workforce staff who you request be present at the hearing appear on the appointed date;

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[You will be notified of] [y]our right to present documentary evidence, testimony, and arguments to support your position at the hearing as well as to cross examine witnesses;

\* \* \*

[A] written decision will be rendered within sixty (60) days of receipt of your written grievance.

(S. 2, Exhibit Tab B).

Rule 60BB-1.005, Florida Administrative Code requires that a local workforce board schedule a hearing after the RWB has received the grievance and provides in pertinent part:

(1) After the RWB has received and reviewed the complaint, the local Workforce Board shall schedule a hearing, and notify the grievant or complainant by certified mail, return receipt, at a minimum of fifteen (15) calendar days prior to the hearing. The hearing notice shall advise the following:

- (a) The date, time, and place of the hearing;
- (b) The pertinent sections of the WIA, WT and WtW, or any other federal regulations involved;
- (c) Affected parties may present witnesses or documentary evidence at the hearing;
- (d) Affected parties may be represented at the hearing by an attorney or other representative; and
- (e) The RWB shall issue its decision within sixty (60) calendar days from receipt of the grievance or complaint.

(2) The hearing shall be conducted as prescribed in the procedures established by the appropriate RWB.

According to SFW's procedures, upon a request for a formal hearing, the Customer Service Unit will immediately date stamp the signed request form and forward it to the SFW Equal Opportunity Officer (EEO) who selects a hearing officer, schedules the date and time of the formal hearing proceedings, and notifies all pertinent parties. SFW's policy also specifies the required contents of a notice of a formal hearing. (See S.2, Exhibit Tab B).

The Agency's review of this matter is governed by Rule 60BB-1.006, Florida Administrative Code. This provision states that the Agency can remand the grievance and complaint back to the RWB to hold a hearing or impose other remedies to resolve the grievance and complaint. *See* Rule 60BB-1.006(5), Florida Administrative Code.

The parties reached a resolution of Mr. Guimaraes' informal grievance as evidenced by Mr. Guimaraes' release of the grievance. However, when SFW failed to provide a written settlement agreement for Mr. Guimaraes' signature, he requested a formal hearing on September 18, 2006. SWF acknowledged the request for a formal hearing, but notified Mr. Guimaraes that it was preparing a settlement package to resolve the grievance before November 16, 2006, the 60 day time limit for conducting the hearing. Subsequent to the request for a hearing and before the 60 day time limit, the parties met for an informal grievance meeting. By letter dated November 30, 2006, SFW notified Mr. Guimaraes of the actions it had taken to resolve his privacy and confidentiality concerns. Mr. Guimaraes then filed an appeal with the Agency on December 12, 2006. Since it appears from the record that no formal settlement agreement was executed by the parties, Mr. Guimaraes is entitled to a formal hearing and decision on the merits of the grievance filed September 6, 2006, including a decision as to appropriate relief.

**WHEREFORE**, pursuant to Rule 60BB-1.006(5), Florida Administrative Code, the Agency remands this matter to SFW for a formal hearing in compliance with Rule 60BB-1.005, Florida Administrative Code, and SFW's grievance policies and procedures within 60 days of the date of this Order. The formal hearing should be limited to those issues raised by Mr. Guimaraes in his grievance filed September 6, 2006.

Alternatively, since it appears from the record that the relief requested by Mr. Guimaraes may have already been provided by SFW, but no written settlement agreement was executed, the parties may formalize the resolution of the grievance by executing a written settlement agreement. The parties

may also agree to settle the grievance on different or additional terms embodied in a written settlement agreement executed by the parties.

**DONE and ORDERED**, this 23 day of April in Tallahassee, Florida.

  
Barbara K. Griffin, Deputy Director  
Agency for Workforce Innovation

## **NOTICE OF RIGHTS TO APPEAL**

### **FEDERAL**

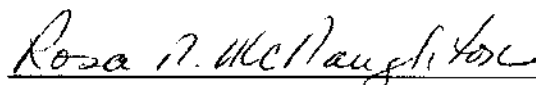
This Agency Decision is rendered pursuant to Workforce Investment Act regulation 20 CFR 667.600(c)(4) and Agency for Workforce Innovation rule Chapter 60BB- 1. A party adversely affected by this decision may petition the Secretary of the United States Department of Labor within 60 days of receipt of 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 # 110 Tallahassee, FL 32399-4128.

### **STATE**

THIS DECISION CONSTITUTES FINAL AGENCY ACTION, pursuant to Section 120.68(2), Florida Statutes. Judicial Review of this proceeding may be 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 appeal 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 E-Mail and U. S. Mail, this 23<sup>rd</sup> day of April 2007, to Mr. Almyr (Al) Guimaraes, 149 S. Redland Road, #101, Florida City, Florida 33031; Mr. Roderick Beasley, Executive Director, South Florida Workforce Board, 7300 Corporate Center Drive, Suite 500, Miami, FL 33126 and Peter S. Tell, Esq., 111 N. 1<sup>st</sup> Street, N. W., Suite 2810, Miami, FL 33128-1930.



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