

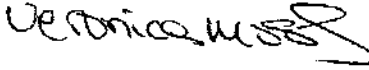
AWI Order No. GA2003-07-00233 Date: 9-30-03

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: ROYE MELLO,
Appellant,

AWI Case No.: GA2003-07-00233

and,

PASCO HERNANDO JOBS AND
EDUCATION PARTNERSHIP
REGIONAL BOARD, INC.,
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 several 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.

Pasco Hernando Jobs and Education Partnership Regional Board, Inc., (PHJEPRB), is the regional workforce board (RWB) for the state Region 16, 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). PHJEPRB operates three One-Stop centers within its workforce system. PHJEPRB 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, Mr. Mello filed a grievance at the local level contesting the level of service he received from PHJEPRB and various partners operating within and outside of the Region 16 one-stop system. Because resolution was not achieved at the local level, he 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:

R. – the Record prepared by PHJEPRB

Mello, p. x. – documents submitted by Mr. Mello. Pages numbered consecutively following PHJEPRB's documents

STATEMENT OF THE CASE

This case began when Mr. Mello filed a grievance with PHJEPRB. The matter was referred to the Office of the General Counsel.

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. Mr. Mello sought employment services through the Region 16 one-stop workforce system beginning in January or February of 1999. (R. 006; Mello p. 359)
2. By letter dated June 17, 2003, Mr. Mello requested an informal hearing regarding his dissatisfaction with services he had received through PHJEPRB. (R. 335; Mello p. 379)
3. PHJEPRB grievance procedures requires a statement in writing if a participant believes an erroneous or inequitable situation exists which substantially affects the interest of the person. The procedures require a hearing within 60 working days of the formal receipt of the grievance. An impartial body will be selected by the EO officer to hear the grievance. (R. 319-323)
4. On June 24, 2003, an informal meeting was held between Mr. Mello and an Equal Opportunity (EO) Officer from another RWB, Region 10, because the EO Officer for PHJEPRB was unavailable due to military service. (R. 357-358)

5. The June 24, 2003, informal meeting was terminated by Marlene Grabbe, the EO Officer from Region 10, after Mr. Mello demanded to meet with all of Region 16's Board members except for one individual Mr. Mello wished to exclude from such meeting; and after Mr. Mello repeatedly instructed Ms. Grabbe that a Mr. Newman from the Governor's office would be attending the informal meeting with Ms. Grabbe via telephone. (R. 357-358)
6. After terminating the informal meeting, Ms. Grabbe provided Mr. Mello the contact information on AWI's EO Officer. (R. 344, 357-358)
7. By letter dated June 25, 2003, PHJEPRB recommended that Mr. Mello submit his grievance to AWI for final resolution. (R. 348; Mello p. 380)
8. On June 30, 2003, Mr. Mello submitted a cover sheet and four (4) pages of documents via facsimile to AWI. These documents included correspondence between Mr. Mello and PHJEPRB dated June 17, 2003, April 24, 2003, and June 25, 2003; and a page from the PHJEPRB grievance procedure.
9. On July 9, 2003, a letter from the AWI Acting General Counsel was forwarded to Mr. Mello and to PHJEPRB, informing them that an appeal had been received from Mr. Mello. This letter requested written arguments from the parties, supporting documentation, a copy of the decision by the PHJEPRB that was the subject of the appeal, and copies of all relevant regulations, policies, or procedures.
10. On August 14, 2003, additional documents were received by AWI from Mr. Mello. These included a two-page letter to the AWI General Counsel and 11 pages of copies of e-mails, letters, and computer printouts regarding Mr. Mello.

11. By letter dated August 14, 2003, AWI notified the parties of an amended timeline for producing the record, argument, and final disposition by AWI. The letter stated that additional documents would be accepted until August 21, 2003, and that a final order would be issued by AWI no later than September 26, 2003.
12. On July 23, 2003, AWI received a packet of documents from Mr. Mello, including a cover letter dated July 21, 2003. In this letter, Mr. Mello stated “that the executive director of RWB #16 down, (subcontractors) under his authority have failed to follow procedures . . . and their [sic] own RWB #16 guidelines of grievance procedures.” (Mello p. 359-444) The beginning of the cover letter stated that the letter was a “general list of what ha(d) happened to (Mr. Mello) with RWB #16 at/with Lee Ellzey’s knowledge since February of 1999.” The letter listed those individuals and organizations Mr. Mello felt had not been helpful to him, and also listed eleven individuals and organizations he considered to have helped him. The letter stated that additional documents would be “provided shortly”, and that the documents would prove that the executive director of PHJEPRB and those under his authority failed to follow federal and state requirements and PHJEPRB’s own guidelines for grievance procedures. The cover letter also stated that in a subsequent submission Mr. Mello would identify the specific resolution he sought to his grievance. (Mello p. 359-360)
13. AWI did not receive further documentation from Mr. Mello, or specific reference to federal or state requirements that Mr. Mello believed were not met.
14. AWI did not receive a specific suggested resolution of Mr. Mello’s grievance from Mr. Mello.

15. On July 29, 2003, AWI received a packet of documents from PHJEPRB, containing a cover letter and documents relating to Mr. Mello's issues. (R. 001-358).
16. On August 20, 2003, AWI received a letter from PHJEPRB in response to the July 23, 2003 submissions of Mr. Mello. This letter stated that PHJEPRB had met its legal obligations to Mr. Mello, and that Mr. Mello had "failed to consistently adhere to program guidelines."

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.

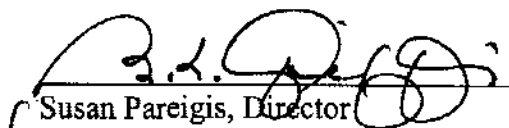
Rule 60BB-1.005, Florida Administrative Code, requires that the local workforce board to schedule a hearing after the RWB has received the complaint.

Mr. Mello complains that PHJEPRB failed to follow its own grievance procedures. While the record shows PHJEPRB attempted to follow its grievance procedures by scheduling a meeting with a "stand-in" EO officer, it did not convene an impartial body to hear Mr. Mello's grievance.

WHEREFORE, the undersigned finds:

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

DONE and ORDERED, this 30th day of September 2003, 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 30th day of September 2003, to Mr. Roye Mello, 17853 Drayton Street, Spring Hill, Florida 34610-000; and Mr. Blake Hardin, Pasco Hernando Jobs and Education Partnership Regional Board, Inc., P.O. Box 15790, Brooksville, Florida 34604.



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