

U.S. Department of Labor

Office of Administrative Law Judges
Washington, DC



In the Matter of

CADELIEN CADET,
Complainant

Case No. 84-JSA-1

v.

FLORIDA DEPARTMENT OF
LABOR AND EMPLOYMENT
SECURITY,
Respondent :

Gregory S. Schell, Esq.
For the Complainant

Chad J. Motes, Esq.
For the Respondent

Before: E. Earl Thomas
Deputy Chief Judge

DECISION AND ORDER

This proceeding arises under the Wagner-Peyser Act of 1933, 29 U.S.C. 943, et seq., and the regulations governing the Job Service system found at 20 C.F.R. Parts 602, 603, 604, and 658 (April 1, 1982).

The parties have agreed to submit the case for decision on the administrative file (hereinafter referred to as "A,") and the written arguments of the parties.

STATEMENT OF THE CASE

On May 11, 1981 the Complainant filed a complaint with the local Job Service office in Immokalee, Florida in which he alleged that the Respondent had violated his rights under regulations found at 20 C.F.R. §§604.16(a), 653.501(d)(2), through its refusal to disclose certain employer information, found on interstate job orders, to the Complainant as a farmworker applicant. The Respondent's action, which is based on statewide policy and practice, is alleged to have interfered with the Complainant's procurement of employment through the Employment Service (AF 20, 23).

Following the investigation by the State Rural Manpower Services Administrator, the Assistant Director of the State Department of Labor and Employment Security notified the Complainant of his finding that the Respondent had committed no violations of the Act or regulations through its denial of the information sought by the Complainant. The Assistant Director found that, although Complainant had been denied access to employers' names and addresses, the Respondent had acted in accordance with pertinent statutory and regulatory authority (AF 25). On June 2, 1983 a final state level decision was issued by the Appeals Referee in which the Respondent's action was upheld (AF 10-15).

On June 16, 1983 the Complainant filed an appeal of the State Referee's decision with the Regional Administrator (AF 9). The Regional Administrator issued his determination affirming the State decision on July 1, 1983 (AF 5, 8). By letter dated July 13, 1983, the Complainant appealed that determination to this Office.

ISSUES

The sole issue to be decided on appeal here is whether the Respondent violated the Act and the regulations promulgated thereunder through its refusal to disclose to the Complainant the names and addresses of employers having placed job orders with the Job Service.

FINDINGS OF FACT¹

1. On May 8, 1981 the Complainant inquired at the Immokalee, Florida Office of the State Employment Service regarding inspection of interstate clearance orders on file at that office for referral of farmworkers to the State of Virginia to work in the tobacco harvest there. The Complainant was informed by Office personnel that the name and address of an employer would be disclosed to the Complainant only after he accepted employment with the employer, in accordance with the statewide policy and practice of limiting access to such information solely to referred workers.

CONCLUSIONS OF LAW

The regulations pertinent to the Respondent's disclosure of job order information in effect at the time that this complaint arose are the following: 1) 20 C.F.R. §602.18, regarding the confidential character of records kept by each state employment agency as mandated by the Department of Labor; 2) §604.16, regarding disclosure of information from Employment Service office files and records; 3) §653.409, regarding limitations on disclosures to the public of applicant or employer information by state employment agencies; and §653.501(f)(2)(ii), requiring that information regarding "wages, working conditions and other material specifications" be given to workers referred by the State employment offices.

¹These findings are based on the parties' Stipulation of Fact as accepted by the State Referee in lieu of an evidentiary hearing at the state level (AF 72-75).

It is uncontroverted that the Complainant was a migrant farmworker applicant within the meaning of 20 C.F.R. §651.10, and not a 'referred worker' under the pertinent regulations, when he sought disclosure of the employer information here at issue (AF 72-73, 80). Thus, the above-cited regulatory provision regarding information to be provided to referred workers, viz.: §653.501(f)(2)(ii), is clearly not applicable to the fax of this case. Contrary to the Complainant's argument that said regulation provides for inspection of all employer information on record at the Job Service office by "any person" (Complainant brief at 7), this regulation unequivocally states that workers referred on clearance orders by the state agency are to be furnished certain information: no other individuals are named in the regulation nor is there any indication in the Act or regulatory provisions thereunder that unlimited accessibility to such information, as is proposed by Complainant, would further the purposes of the Act by enhancing the efficiency of the Employment Service network.² Nonetheless, the aforesaid regulatory provision may be helpful in providing insight into the proper construction and application of the controlling regulations, viz.: 20 C.F.R. §§602.18, 604.16, and 653.409.

The Wagner-Peyser Act provides for the referral of prospective employees to employers through the network of state operated employment offices on both a local and an interstate basis. The Act requires that migrant farmworkers be provided with information regarding job opportunities through the Job Service Office network, but does not delineate the procedures to be used to serve this purpose. The Act empowers the Secretary of Labor to promulgate regulations under which the state agencies are to act in providing employment counseling, referral and related services in accordance with the mandates of the Act. 29 U.S.C. §49K. Under the regulations pertinent to the issue of disclosure, the Respondent was required to assure that information contained in the state employment agency records be used "solely for the purpose of administering the state system of public employment offices."³ 20 C.F.R. §602.18. In addition, the provisions at 20 C.F.R. §604.16 state the Employment Service policy of non-disclosure of

²The text of §653.501(f)(2)(ii) reads,

Applicant-holding offices shall provide workers referred on clearance orders with a checklist summarizing wages, working conditions and other material specifications on the job order. Such checklist, where necessary, shall be in English and Spanish.

The checklist shall include language notifying the worker that a copy of the complete order is available for inspection. One copy of the form with all attachments shall be available for inspection in the applicant-holding office and the order-holding office. State agencies shall use a standard checklist format provided by ETA unless a variance has been approved by the Regional Administrator.

³Effective October 1, 1983, certain Job Service regulations were repealed, viz.: Parts 602, 603, 604, 651 (§§651.9), 653, Subparts A and E; Part 652 was amended.

specific applicant or employer information. That provision allows disclosure of information "to the extent necessary for the efficient performance of recruitment, placement, employment counseling, and other employment service functions." 20 C.F.R. §604.16(a). This regulation expressly prohibits the disclosure of "information identifiable to individual applicant, employers, or employing establishment." *Id.*, at (e). The regulation concludes by allowing for disclosure for purposes other than those enumerated in the provisions but only "if such disclosure will not impede the operation of, and is not inconsistent with the purposes of, the public employment service program...." *Id.*, at (g).

The Regional Administrator argues that the Respondent's restricted disclosure of employer names and addresses aids in serving the purposes of the Act in that it prevents the use of such information by private employment agencies which would charge fees for the service (Regional Administrator's brief at 3). The Regional Administrator also notes that the Respondent's practice of limited disclosure enhances the efficacy of the interstate clearance system as it aids in the orderly referral of farm workers to employers, *i.e.*, the state agency refers workers to the employer at the time and in the number requested by the latter rather than furnishing the farmworker applicants with employer information that would allow the workers to arrive at the employer's place of business in haphazard fashion (*Ibid.*)

The Complainant argues that the Respondent misapplied the above-cited regulations and seeks to support this conclusion with its argument that the Respondent's non-disclosure practice violates the Complainant's right to the provision of employment services under the Act. The Complainant asserts that his rights under the Act extend to requiring the State agency to allow the farmworker applicant to choose the employer to which he will be referred (Complainant brief at 8-9). The Complainant's argument lacks support in statutory and regulatory authority and pertinent case law.

The Complainant relies, in great part, on Federal court decisions and other indicia of disputes and difficulties arising from the application of Job Service regulations to migrant farmworkers and employers involved in the interstate clearance process to support its argument regarding the need for complete disclosure of employer information by the Respondent. However, none of these authorities cited by the Complainant are directly applicable to the facts of the instant case. The Complainant cites provisions under the Migrant and Seasonal Farmworkers Protection Act, 29 U.S.C. §1801, *et seq.*, that requires farm labor contractors to disclose certain information to prospective workers, but these provisions are wholly irrelevant to disclosure by Job Service offices (Complainant's brief at 10-12). The Complainant has shown no basis, in law or fact, for requiring complete job order disclosure, including employer's name and address, by the State Job Service to farmworker applicants. Indeed, the prevention of the use of unscrupulous methods by those private parties recruiting farmworkers which is the primary focus of the Farm Labor Contractor Act and the Migrant and Seasonal Farmworkers Protection Act, is one of the evils that the Respondent's partial disclosure to applicants is anticipated to prevent. As the Regional Administrator's argument states, the unrestricted disclosure of employer information to any person so requesting would allow a thwarting of the Job Service purpose to provide free employment referral in such a way as to benefit worker and employer alike, thereby ensuring the continuing efficacy of the Job Service. The Complainant has made no allegation that

the Respondent's non-disclosure in this case was inconsistent with its statewide policy and practice regarding non-disclosure. The Complainant cites an abundance of case law demonstrating that much confusion and inefficiency has resulted from the application of the Job Service regulations regarding the processing of interstate clearance orders and referral of migrant farmworkers; nonetheless, the administrative law judge can decide only those issues emanating from the facts of the case before him. The Respondent here acted in accordance with the pertinent regulations when it denied the Complainant access to employer names and addresses. The Complainant's argument that the Respondent's construction and application of the regulations results in an undermining of the purpose of the Act as it interferes with the effective referral of the unemployed farmworker to a job opportunity is not supported by the record in this case. The Respondent's action served the statutory purpose without depriving the Complainant of his rights to employment referral under the Act.

ORDER

Accordingly, it is hereby ORDERED that the Determination of the Regional Administrator this case is AFFIRMED.

E. EARL THOMAS
Deputy Chief Judge

Dated: MAY 8 1984
Washington, D.C.
EET/JB/fm