



DATE: MAR 31 1993

IN THE MATTER OF

NATIONAL PUERTO RICAN FORUM,
Complainant

V.

U.S. DEPARTMENT OF LABOR,
Respondent

CASE No.: 93-JTP-8

ORDER OF DISMISSAL

This matter arises under the Job Training Partnership Act (JTPA), 29 U.S.C. § 1501 et seq., and the regulations issued thereunder at 20 C.F.R. § 629.57.

On February 25, 1993, the United States Department of Labor (DOL) filed with this Office a Motion to Dismiss or, in the alternative, a Motion for Extension of Time in order to file the administrative record. The DOL states that the National Puerto Rican Forum (Complainant) failed to file with this Office a timely appeal of the Final Determination of audit findings. Pursuant to 20 C.F.R. § 629.57(c)(1), the Complainant had to file its appeal within twenty-one (21) days of receipt of the Final Determination of April 13, 1993. Nevertheless, the Complainant did not request a hearing until January 6, 1993, over seven months later. The DOL argues that the regulations at 20 C.F.R. § 629.57(c)(2) clearly state that this twenty-one day filing requirement is jurisdictional; therefore, this Office lacks the authority to hear this matter.

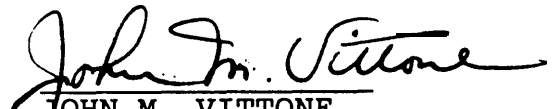
In support of its Motion to Dismiss, the DOL cites to State of California v. U.S. Department of Labor, 91-JTP-8 (January 7, 1992), in which the undersigned held that this Office could not waive the jurisdictional twenty-one day filing requirement. Id. at 2. Moreover, even if the requirement is waivable, it would only be appropriate to do so in exceptional circumstances. Id. Here, the DOL argues that no such exceptional circumstances exist. Prior to filing its appeal, the Complainant did not make any requests for an extension of time. Furthermore, the Complainant's only acknowledgement of the delay was mentioned in its request for hearing, which stated that the present

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Comptroller-Fiscal Officer did not effectively take over until July 1, 1992, and was not made aware of the Final Determination of the audit findings. The DOL states that it still took approximately six months to file an appeal once this change in the Complainant's organization occurred.

To date, the Complainant has not filed with this Office any response to the DOL's Motion to Dismiss. Upon reviewing the administrative record, I find that even if the filing requirement could be waived, the Complainant has not articulated adequate reasons for failing to file a timely appeal of the Final Determination. Pursuant to 20 C.F.R. § 629.57(c)(2), I find that this Office lacks jurisdiction to hear this matter. Therefore, it is hereby ORDERED that Complainant's request for hearing is DISMISSED.


JOHN M. VITTONI
Deputy Chief Judge

JMV/LM/mb

SERVICE SHEET

CASE NAME: National Puerto Rican Forum

CASE No.: **93-JTP-8**

TITLE OF DOCUMENT: Order of Dismissal

This is to certify that a copy of the above-referenced document was served by regular mail, this 31st day of March 1993, upon the following:

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