



**In the Matter of:**

**FLORIDA DEPARTMENT OF LABOR  
AND EMPLOYMENT SECURITY,**

**COMPLAINANT,**

**v.**

**UNITED STATES DEPARTMENT OF LABOR,**

**RESPONDENT.**

**ARB CASE NO. 04-168**

**ALJ CASE NO. 99-JTP-16**

**DATE: May 19, 2005**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**ORDER STAYING FINAL DECISION AND ORDER**

On February 28, 2005, the Administrative Review Board issued a Final Decision and Order in this case, ordering the Florida Department of Labor and Employment Security (FDLES) to repay from non-federal funds the sum of \$11,419,499 to the United States Department of Labor pursuant to 29 U.S.C.A. § 1574(e)(1) of the Job Training Partnership Act of 1982, as amended, (JTPA or Act) and 1 U.S.C.A. § 109 (West 2001). On March 25, 2005, the FDLES filed a Motion for Stay of Final Decision and Order. *See* Federal Rules of Appellate Procedure Rule 18(a)(1), 28 U.S.C.A. (West 1998). The FDLES averred that it intended to file a Petition for Review of the Board's Final Decision and Order with the United States Court of Appeals for the Eleventh Circuit pursuant to Section 168(a)(1) of the JTPA, 29 U.S.C.A. § 1578(a)(1) (West 1998). On May 9, 2005, the attorney for the United States Department of Labor's Grant Officer, the Respondent in this case, notified the Board that the FDLES had filed a Petition for Review of the Board's Final Decision and Order with the Eleventh Circuit Court of Appeals and the Board sent a certified list of documents to the Court.

Review petitions to the United States Court of Appeals do not automatically stay the order rendered by the Board as the Secretary of Labor's designee under the JTPA. *See* 29 U.S.C.A. § 1578(a)(2); Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002). Pursuant to Rule 18(a)(1) of the Federal Rules of Appellate Procedure, "[a] petitioner must ordinarily move first before the agency for a stay pending review of its

decision and order.” Federal Rules of Appellate Procedure Rule 18(a)(1), 28 U.S.C.A. (West 1998). Rule 18 “does not supplement nor diminish the availability of a stay when a specific statute [such as the JTPA in this case] authorizes or prohibits such an order.” *Superior Trucking Co., Inc. v. United States*, 614 F.2d 481, 485 (5th Cir. 1980).

The FDLES states that it believes a stay of the Board’s order is necessary to maintain the status quo and to provide meaning to the appellate process. Otherwise, the FDLES states that if payment is required, it must seek an appropriation from the state legislature which could affect when the FDLES budget will become effective. In response, the Grant Officer states that he has no objection to the request for deferral of payment pending the completion of judicial review, so long as interest continues to accrue on the debt.

Accordingly, FDLES’s Motion for Stay of Final Decision and Order is **GRANTED** and the Board’s order that the FDLES repay from non-federal funds the sum of \$11,419,499 to the United States Department of Labor pursuant to 29 U.S.C.A. § 1574(e)(1) of the JTPA and 1 U.S.C.A. § 109 (West 2001) is **STAYED**, pending the outcome of the review of the Board’s Final Decision and Order by the United States Court of Appeals for the Eleventh Circuit.<sup>1</sup>

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

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<sup>1</sup> The stay of the Board’s order that the FDLES repay from non-federal funds the sum of \$11,419,499 to the United States Department of Labor does not stay, however, the right, if any, of the United States Department of Labor to the accrual of interest on the debt pursuant to the provisions of the Debt Collection Act. *See generally* 31 U.S.C.A. § 3717 (West 2003).