



In the Matter of:

THE WORKPLACE, INCORPORATED

ARB CASE NO. 13-064

COMPLAINANT,

ALJ CASE NO. 2012-WIA-011

v.

DATE: November 14, 2013

U.S. DEPARTMENT OF LABOR,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Alan J. Tyma, Esq.; Ryan & Tyma, LLP; Shelton, Connecticut

For the Respondent:

Jonathan R. Hammer, Esq.; Harry L. Sheinfeld, Esq.; Gary M. Buff, Esq.; United States Department of Labor, Washington, District of Columbia

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Luis A. Corchado, *Administrative Appeals Judge*; and Lisa Wilson Edwards, *Administrative Appeals Judge*

FINAL DECISION AND ORDER

This case arises under the provisions of the Senior Community Service Employment Program (SCSEP), authorized by the Older Americans Act, as amended, 42 U.S.C.A. § 3056, *et seq.* (Thomson Reuters 2013) and implementing regulations, 20 C.F.R. Part 641 (2013).¹ The Workplace, Inc. (Workplace) applied for a national grant to administer a job training program under SCSEP. The Department of Labor's (DOL's) Grant Officer (GO) denied the application.

¹ The SCSEP is a required partner under the Workforce Investment Act (WIA), 29 U.S.C.A. § 2841(b)(1)(B)(vi) (Thomson Reuters 2013). *See* 20 C.F.R. §§ 641.200, .210 (“When acting in their capacity as WIA partners, SCSEP grantees and sub-recipients are required to follow all applicable rules under WIA and its regulations,” . . . “to provide eligible and ineligible individuals with referrals to WIA intensive and training services and access to other activities and programs.”).

Workplace appealed. 20 C.F.R. § 641.900. On May 14, 2013, following a hearing, an Administrative Law Judge (ALJ) affirmed the GO's denial of the application. Workplace petitioned the Administrative Review Board (ARB) for review. We accepted the case for review, and we affirm. 20 C.F.R. § 641.900(e).

BACKGROUND

The facts of the case are set out fully in the ALJ's Decision and Order Denying Claim (D. & O.). The SCSEP, administered by the Department of Labor, serves "unemployed low-income persons who are 55 years of age and older and who have poor employment prospects by training them in part-time community service assignments and by assisting them in developing skills and experience to facilitate their transition to unsubsidized employment." 20 C.F.R. § 641.110; *see also* 42 U.S.C.A. § 3056(a)(1); 20 C.F.R. § 641.120. In March 2012, DOL published a Solicitation for Grant Applications (SGA) 11-04 for the SCSEP National Grant for Program Year 2012. D. & O. at 4, citing Hearing Transcript (Tr.) at 21; *see also* Administrative Record (AR) Tab A. DOL deemed Workplace eligible to submit an application for the new grant period, and Workplace applied for a national grant to operate a SCSEP job training program in Connecticut and Rhode Island. D. & O. at 4; Tr. at 21, 26. The GO denied Workplace's application based on its comparative rating in a competitive administrative process. D. & O. at 4-7; *see also* AR Tab B at 1-5.

Workplace argued below that the GO failed to adhere to the process for reviewing applications as set out in the SGA, and that this error resulted in Workplace's application losing points. Workplace further argued that the GO's refusal to reduce the minimum scoring floor was arbitrary and lacked a rational basis. The ALJ rejected these contentions. The ALJ determined that the GO's denial of the grant application "was reasonable, and not arbitrary and capricious." D. & O. at 14.

JURISDICTION

The Secretary of Labor delegated authority to the ARB to issue final agency decisions in cases arising under the Older Americans Senior Community Service Employment Program, 42 U.S.C.A. § 3056; 20 C.F.R. § 641.900. Secretary of Labor's Delegation of Authority and Assignment of Responsibility to the Administrative Review Board, 77 Fed. Reg. 69378, 69379 (Nov. 16, 2012).

DISCUSSION

In the absence of an expressed standard of review in the Older Americans Act or in the regulations for this grant program, we apply a standard we used in comparable WIA grant programs as announced in *United Tribes of Kansas v. U.S. Dep't of Labor, ETA*, ARB No. 01-026, ALJ No. 2000-WIA-003 (ARB Aug. 6, 2001). In *United Tribes*, we held that the GO's decision must be affirmed "unless the party challenging the decision can demonstrate that the decision lacked any rational basis." *Id.* at 5 ("This standard is highly deferential and is akin to

the ‘arbitrary and capricious’ standard used by the federal courts.”); *see also Commonwealth of Puerto Rico, Dep’t of Labor & Human Res., Right to Employment Admin. v. U.S. Dep’t of Labor*, ALJ No. 2008-WIA-004, ARB Nos. 09-011, -013; slip op. at 7 (ARB Apr. 10, 2009). “This is a difficult standard and properly so, because there must be considerable discretion exercised in determining the award of Department funds among multiple grant applications.” *Id.* at 7 (quoting *North Dakota Rural Dev. Corp. v. U.S. Dep’t of Labor*, No. 1985-JTP-004, slip op. at 5 (Sec’y Mar. 25, 1986)). Workplace fails to meet its burden of showing that the GO’s decision lacks a rational basis.

First, the ALJ properly determined that Workplace “failed to establish that the . . . [GO] deducted points for criteria not found in the SGA.” D. & O. at 10. The record supports the ALJ’s determination that the panelists’ comments and deductions were grounded in the SGA criteria. *See Id.* at 8-11, citing AR Tabs A and B. The weaknesses the “panelists’ identified were reasonably based on the SGA criteria, and the GO’s reliance on these scores did not lead to a decision that was arbitrary and capricious.” *Id.* at 10.

Next, as to the scoring floor set by the GO, the ALJ properly determined “that it was within the GO’s discretion to establish a scoring floor, and it was reasonable for the GO to set the floor at 75 points.” *Id.* at 14. The ALJ upheld the GO’s decision “not to reduce the floor by an additional 5 points” which would have resulted in “lowering the score for grant acceptance to an uncomfortable 70 points.” *Id.* The ALJ observed that “[l]owering the score would have allowed for only one more applicant (The Workplace) when [the GO] already had an acceptable number of organizations selected, and it would have created an exception to DOL’s standard practice of denying grants to applicants with scores in the low 70s.” *Id.* The ALJ pointed to specific evidence in the record to support his conclusions. Based on this reasoning and the record, the ALJ properly concluded that the GO’s decision to “set[] the floor at a score of 75 was not arbitrary and capricious.” *Id.*

CONCLUSION

The ALJ’s Decision and Order Denying Claim is **AFFIRMED**.

SO ORDERED.

LISA WILSON EDWARDS
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge