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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-85, 277]

Aegis Media Americas
a Subsidiary of Dentsu Holdings USA, Inc.
Including On-Site Leased Workers From
Solomon Page Technology Partners
Boston, Massachusetts;

Notice of Negative Determination
Regarding Application for Reconsideration

By application dated June 30, 2014, a worker requested administrative reconsideration of the Department of Labor's negative determination regarding eligibility to apply for worker adjustment assistance, applicable to workers and former workers of Aegis Media Americans, a subsidiary of Dentsu Holdings USA, Inc., including on-site leased workers of Solomon Page Technology Partners, Boston, Massachusetts (Aegis Media Americans). The determination was issued on May 23, 2014. The Department's Notice of determination was published in the Federal Register on June 6, 2014 (79 FR 32757). Aegis Media Americans supplies media marketing and communications strategy services.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

- (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

- (2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or
- (3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The negative determination of the Trade Adjustment Assistance (TAA) petition filed on behalf of workers at Aegis Media Americans was based on the findings that the subject firm does not produce an article within the meaning of Section 222(a) or Section 222(b) of the Trade Act of 1974, as amended.

The request for reconsideration asserts that the Department made "an incorrect assessment of Dentsu Aegis Network's services, products and articles"; that information technology (IT) workers' separation from the subject firm was due to outsourcing to Tata Consulting Services (TCS); that a "significant part of the responsibility of the Aegis IT workers group (IT Team) was the monitoring of major servers and services for Aegis"; that "After TSC started servicing Aegis, the monitoring of these services was shifted to overseas teas who now performed the monitoring duties in India"; and that Aegis Media Americans produced an article because an "article is the byproduct of the internal company services, processes and the product/article itself" and that the articles produced are computer code & algorithms.

The request also asserts that there should be no distinction between computer code for hardware and computer code for software and that the databases upon which services rely (such as research and analysis) are also articles.

In Former Employees of Mortgage Guaranty Insurance Corporation (MGIC) v. United States Secretary of Labor (Court No. 07-00182), the Department stated the policy requiring that the firm employing the subject workers produce an article domestically; that workers providing services incidental to the provision of a service are not engaged in the production of an article, for the purposes of the Trade Act; and that the services provided by a workers' firm would not be considered articles, whether tangible or intangible. The Department's determination in the afore-mentioned case (negative determination on remand regarding petitioning workers' eligibility to apply for Trade Adjustment Assistance) was affirmed by the U.S. Court of International Trade.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either 1) a mistake in the determination of facts not previously considered or 2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination. Based on these findings, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After careful review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, D.C., this 4th day of September, 2014

Del Min Amy Chen,
Certifying Officer, Office of
Trade Adjustment Assistance.
4510-FN-P

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