

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

In the Matter of:)	D.C. No. 17-004
Bridge Capital, LLC,)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
Department of Labor – Citizen Job Availability)	
and Citizen Job Placement Section,)	
Appellee.)	
)	

This denial appeal came on for hearing on March 13, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Bridge Capital, LLC, was represented by its counsel, Jordan Sundell. The Department’s Citizen Availability and Citizen Job Placement Section (“Job Placement”) was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant’s timely appeal of a Notice of Denial (“Denial”) issued by the Job Placement Section on February 3, 2017. [A copy of the Denial was entered into evidence as Hearing Exhibit 1; a copy of the Employer’s letter of appeal, dated February 15, 2017, was entered into evidence as Hearing Exhibit 2.]

Appellant Bridge Capital, LLC (“Employer”) operates a lending and real estate business in Saipan. The Job Placement Section denied Employer’s request for a Certification of Compliance, citing two grounds:

- (1) Employer failed to post Employer Declarations with respect to seven JVAs posted by Employer in 2016, as required by the Employer Rules and Regulations (“Regulations”), codified in the Northern Mariana Islands Administrative Code (“NMIAC”), at § 80-20.1-235(e); and

(2) Employer failed to submit quarterly Total Workforce Listings for the 1st and 2nd quarters in 2016, as required by Regulations at NMIAC § 80-20.1-505(b).

1. **Failure to Post Employer Declarations With Respect To 7 Posted JVAs.**

The Department's "Employer Declaration" Regulation requires an employer to post an online "declaration" on the Department of Labor ("DOL") website (www.marianaslabor.net) in cases where the employer has rejected a U.S.-status qualified worker for a particular job and instead, hired a foreign national worker for the position. [Regulations at NMIAC § 80-20.1-235(e).] In such cases, the regulation requires the employer to post a short response on the website, explaining: (1) the action it took with respect to each applicant who posted a response to the job vacancy; and (2) the reason(s) why that person was not hired for the position. *Id.*

In the Denial, Job Placement charged that Employer had failed to post timely Employer Declarations in connection with seven JVAs that Employer posted in 2016. [Hearing Exhibit 1.] These JVAs were for the following positions:

Accountant
Bookkeeper
Business Development Manager (China)
Translator (Lao language)
Translator (Khymer language)
IT Manager
Controller

At Hearing, Employer admitted that it never posted responses to responders to any of the above-listed JVAs. Mr. Sundell, who oversees Employer's compliance matters, testified that Bridge Capital had not realized that it was obligated to post individual responses to each online responder once it made its hiring decision. Nevertheless, Mr. Sundell assured the Hearing Officer that Employer reviewed each of the responders' resumes to determine whether they were qualified. [Representations of Mr. Sundell.]

Mr. Sundell provided the following details as to each of the posted JVAs. First, Employer decided to cancel three of the job searches - for accountant, bookkeeper and business development manager for China - during the time that the JVA was running on DOL's website. For these positions, Employer never reviewed

responders' resumes because Employer considered the matter cancelled. Employer never hired anyone for those positions. *Id.*

Employer sought translators in the Lao and Khymer languages. [Copies of these JVAs were entered into evidence as Hearing Exhibits 3 and 4.] The Department's automatic referral system posted 102 responders for each position.¹ Employer reviewed the resumes of each of the 102 responders and found none of them to be qualified, given that none of the responders spoke the relevant language (Lao or Khymer). Employer stressed that although it did not post "declarations" to each responder, it did review each of the posted resumes to determine whether anyone was qualified. [Representations of Mr. Sundell.]

As to the IT Manager position, Employer reports that 3 responders posted on DOL's website. Employer contacted all three responders and concluded that none of them was qualified for the job. *Id.* [See Hearing Exhibit 5 – copy of JVA for the IT Manager position.] Employer admits it neglected to post Employer Declarations to any of the responders for this position, but it did review and consider the responders. *Id.*

As to the Controller position, Employer reports that 10 responders posted on DOL's website. Employer reviewed all posted resumes and contacted at least one responder by telephone, plus one walk-in applicant. Employer concluded that none of these persons was qualified for the job. *Id.* [See Hearing Exhibit 6 – copy of JVA for Controller position.] Employer admits that it neglected to post Employer Declarations to any of the responders for this position, but it did review and consider the responders. *Id.*

2. Failure to Submit Quarterly Total Workforce Listings for two quarters in 2016.

DOL Regulations require employers to submit information *on a quarterly basis* regarding "the number and classification of employees for whom wages were paid during the quarter." [Regs. at NMIAC § 80-20.1-505(b).] This information is submitted in a document called the Total Workforce Listing. The Department

¹ This case illustrates a problem with DOL's automatic referral system. Here we have 102 referrals for a translator in the Khymer and Lao languages. None of the referrals spoke Khymer or Lao; yet their names and resumes were referred to the employer, which then obligated that employer to (a) review the resumes and (b) post online responses to each of the 102 responders. This process can be time-consuming even for a large company. For a smaller company, the process can become burdensome.

requires employers to submit this information in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

Employer failed to submit Total Workforce Listings for the 1st and 2nd quarters of 2016. After receiving the Denial, Employer prepared and submitted the missing Total Workforce Listings. [See Hearing Exhibit 2 – copies of Total Workforce Listings for the 1st and 2nd quarters of 2016.] Mr. Sundell, who oversees Employer's compliance matters, testified that Bridge Capital had not realized that it was obligated to submit Total Workforce Listings on a quarterly basis. As soon as Employer received the Denial, it promptly took steps to correct the deficiencies.

DISCUSSION

The evidence established that: (1) Employer neglected to post Employer Declarations as to numerous JVAs posted in 2016; and (2) Employer failed to submit two quarterly Total Workforce Listings in 2016. [Regs at NMIAC §§ 80-20.1-505(b) and 510.]

Employer introduced evidence in support of its argument that the Denial should be reversed and any sanction should be mitigated. As to the first charge, Employer admitted that it had not posted "declarations" to online responders, but Employer presented uncontested evidence that it actually reviewed and considered each posted response, including the voluminous responses to the translator positions, which amounted to a waste of Employer's time. Furthermore, Employer noted that 3 of the 7 posted JVAs had been cancelled (unofficially) by Employer during the time that the JVA was running. [Representation of Mr. Sundell.] As to the missed deadlines to submit Total Workforce Listings, Employer took immediate steps to correct these deficiencies by submitting new documents after it received the Denial.

The Hearing Officer finds it relevant that Employer actually reviewed responders' resumes, even though Employer neglected to file "declarations." As to Employer cancelling its own JVAs, the Hearing Officer notes that although an employer is allowed to cancel a job search, this Employer should be faulted for never notifying DOL or the responders that the JVAs had been cancelled.

At the conclusion of the Hearing, Job Placement testified that it would accept a reversal of its denial, provided that Employer paid a monetary sanction for the violations detailed above. Job Placement left it to the Hearing Officer to determine the appropriate amount of sanctions.

Sanctions:

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized, but not required, to levy a maximum fine of \$2,000 for each violation. 3 CMC § 4528(f)(2).

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that “[t]he hearing officer is authorized to...[u]se the inherent powers ...to further the interests of justice and fairness in proceedings.” [Regs. at § 80- 50.4-820(h) and (o).]

In this case, Employer is subject to a fine for its failure to comply with two Regulations: (1) failure to post Employer Declarations with respect to several posted JVAs; and (2) failure to submit Total Workforce Listings for two quarters in 2016. Employer noted several facts in support of its argument that its fine should be reduced. First, as to Employer Declarations, Employer noted that even though it mistakenly neglected to file online responses, nevertheless, it had reviewed the resume of every responder in good faith and been ready to pursue qualified candidates. Second, although it had missed the deadline to submit Total Workforce Listings, it corrected this deficiency soon after it received the Denial.

The Hearing Officer agrees that the standard fine for Employer Declaration violations should be reduced to \$500, in recognition of the fact that Employer actually reviewed and considered each posted response, including the voluminous responses to the translator positions, which amounted to a waste of Employer’s time. As to the failure to post two quarterly Total Workforce Listings, the Hearing Officer believes that \$200 is an appropriate sanction for this deficiency, particularly given that Employer recently was sanctioned in a separate order for failure to produce the same type of documents in 2015. [See Administrative Order re D.C. No. 17-003, issued on 3/30/2017.]

In conclusion, based on the foregoing, the Hearing Officer holds that this Denial should be reversed, provided that Employer pays a sanction of \$700 for its multiple deficiencies.

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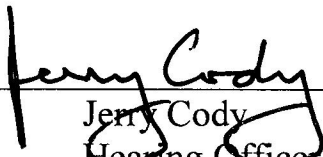
Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Good Standing for Appellant Bridge Capital, LLC is hereby REVERSED, provided that Appellant complies with the terms of the Order, as set forth below. The Department is instructed to issue the Certification of Compliance (Certificate of Good Standing) to Appellant as soon as Appellant has paid the full sanction set forth below.

2. **Sanctions:** For the reasons stated above, Appellant Bridge Capital, LLC is hereby FINED seven hundred dollars (\$700). Appellant is ORDERED to pay the sanction no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: March 31, 2017



Jerry Cody
Hearing Officer