

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-52,326]

Bojud Knitting Mills, Inc., Amsterdam, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application of September 8, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on August 13, 2003, and published in the **Federal Register** on September 2, 2003 (68 FR 52228).

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 mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Bojud Knitting Mills, Inc., Amsterdam, New York was denied because criterion (1) was not met. Employment at the subject plant increased from 2001 to 2002, and in January to July of 2003 relative to the same period of 2002.

The petitioner implies that the petitioning worker group met the criterion concerning an immediate threat of layoffs, as workers were laid off soon after the negative determination; specifically, he states that workers were laid off in the last week of August and the first week of September.

A company official was contacted in regard to this issue and indicated that employment increased in January through August of 2003 relative to the same period in 2002, but employment levels did decline in September of 2003. The official further clarified that future "employment declines are very hard to predict as the volume of employees is based on customer orders."

Further, the official confirmed that which was discovered in the initial investigation, which was that the company did not shift production, nor did it import like or directly competitive products.

Finally, results of a survey of major declining customers conducted at the time of the initial investigation established that customer imports did not contribute importantly to layoffs at the subject firm.

Conclusion

After 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 at Washington, DC, this 23rd day of December, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04-1436 Filed 1-22-04; 8:45 am]

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DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-52,771]

Central-PA Distribution & Warehouse, LLC, Reedsville, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Central-Pa Distribution & Warehouse, LLC, Reedsville, Pennsylvania. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-52,771; Central-Pa Distribution & Warehouse, LLC, Reedsville, Pennsylvania (January 8, 2004)

Signed at Washington, DC this 14th day of January 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04-1431 Filed 1-22-04; 8:45 am]

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DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-52,082]

Computer Sciences Corporation Workers Employed at Pratt & Whitney; West Palm Beach, FL; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked September 5, 2003, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Computer Sciences Corporation employed at Pratt & Whitney, West Palm Beach, Florida was signed on August 4, 2003, and published in the **Federal Register** on August 18, 2003 (68 FR 49522).

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 mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Computer Sciences Corporation employed at Pratt & Whitney, West Palm Beach, Florida engaged in information technology services for Pratt & Whitney. The petition was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

In the request for reconsideration, the petitioners alleged that the petitioning worker group did produce a product, describing their function specifically as "writing software programs." The petitioner also infers that the fact that these software programs are copyrighted is proof of their status as a product and not a service. Further conversations with the petitioners indicated that they were coordinating a shift of work functions to India and Connecticut prior to their layoff.

A conversation with the company official indicated that some of the petitioning workers performed computer "source coding" for a mainframe owned by Pratt & Whitney,

and that this mainframe was moved to Connecticut, necessitating a separation for workers at the West Palm Beach facility. The official also stated that other workers were engaged in creating design specifications for Pratt & Whitney's SAP applications, and that some "source coding services" were performed in India.

The Department has traditionally deemed custom software design and programming as a service. Electronically generated software code is not a tangible commodity. This is supported by the fact that they are not marketable products listed on the Harmonized Tariff Schedule of the United States (HTS), published by the United States International Trade Commission (USITC), Office of Tariff Affairs and Trade Agreements, which describes all articles imported to or exported from the United States.

Further support that Computer Sciences Corporation workers in West Palm Beach did not produce an article is found in examining what items are subject to a duty. Throughout the Trade Act, an article is often referenced as something that can be subject to a duty. To be subject to a duty on a tariff schedule, an article will have a value that makes it marketable, fungible, and interchangeable for commercial purposes.

However, although a wide variety of tangible products are described as articles and characterized as dutiable in the HTS, customized software code such as that created by the petitioning worker group is not listed in the HTS. Such items are not the type of work products that customs officials inspect and that the Trade Adjustment Assistance program was generally designed to address.

Further, a discussion with an official at the U.S. Customs Service clarified that, when software is considered dutiable, the tariff is based on the cost of the media (such as paper, CD, or computer disk) and not on the value of the information contained on the media. As the customized computer code in question for this worker group is transmitted electronically, no value could be assessed in terms of import impact.

In addition, the 2002 edition of the North American Industrial Classification System (NAICS), a standard used by the Department to categorize products and services, designates "establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer" as "Custom Computer Programming Services" (NAICS 541511).

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

Conclusion

After 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 at Washington, DC this 17th day of December, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04-1437 Filed 1-22-04; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-52,362]

Cookson Electronics, Assembly Material Group, a Division of Frys Metals, Inc., d/b/a Alpha Metals, Jersey City, NJ; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Cookson Electronics, Assembly Material Group, a division of Frys Metals, Inc., d/b/a Alpha Metals, Jersey City, New Jersey. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-52,362; Cookson Electronics, Assembly Material Group, a div. of Frys Metals, Inc., d/b/a Alpha Metals, Jersey City, NJ (January 8, 2004).

Signed at Washington, DC this 14th day of January 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04-1435 Filed 1-22-04; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-52,627]

Flextronics Logistics, Including Leased Workers of Wood Personnel, Mount Juliet, TN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Flextronics Logistics, including leased workers of Wood Personnel, Mount Juliet, Tennessee. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-52,627; Flextronics Logistics, including leased Workers of Wood Personnel, Mount Juliet, Tennessee (January 7, 2004)

Signed at Washington, DC this 14th day of January 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04-1433 Filed 1-22-04; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-53,187]

Harriet & Henderson Yarns, Inc., Corporate Office, Henderson, NC; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Harriet & Henderson Yarns, Inc., Corporate Office, Henderson North Carolina. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-53,187; Harriet & Henderson Yarns, Inc. Corporate Office, Henderson, North Carolina (January 8, 2004)