U.S. Department of Labor

Employment and Training Administration 200 Constitution Avenue, N.W. Washington, D.C. 20210

February 13, 2004

Mr. Mark Bain TA-W-53,209
8 Watkins Road
Bloomfield, CT 06002

Dear Mr. Bain:

This is to advise you that the Department of Labor has issued a notice of negative determination on reconsideration with respect to the case referenced above. Enclosed is a copy of the notice which will be published in the Federal Register.

Interested parties have 60 days from the date this decision is published in the Federal Register to file for judicial review of the Department's negative determination. Petitions for judicial review must be filed with the U.S. Court of International Trade, I Federal Plaza, New York, New York 10007. Further information regarding procedures or instituting an action in the U.S. Court of International Trade may be obtained from the Office of the Clerk at the above address. The phone number for the clerk of the Court is (212) 264-7090.

Please note that there are other training and reemployment services available to dislocated workers under the Workforce Investment Act (WIA). Workers are encouraged to inquire about their State's plans for providing training, job search, relocation and/or other services to dislocated workers under WIA.

Sincerely,

Signature

TIMOTHY F. SULLIVAN
Director, Division of
Trade Adjustment Assistance

Enclosure

DEPARTMENT OF LABOR

Employment and Training Administration

TA-W-53,209

COMPUTER SCIENCES CORPORATION
FINANCIAL SERVICES GROUP ("FSG")
EAST HARTFORD, CONNECTICUT

Notice of Negative Determination
on Reconsideration

On January 5, 2004, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the Federal Register on January 23, 2004 68 FR 3391-3392).

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, Financial Services Group ("FSG"), East Hartford, Connecticut. 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 petitioner alleged that the petitioning worker group produced a product and that production (in the form of design, coding, testing and delivery of software) shifted to India.

Further contact with the company during reconsideration revealed that the petitioning workers did produce widely marketed software components on CD Rom and tapes, and thus did produce an article within the meaning of the Trade Act.

However, although the company did report that some "source coding" did shift to India in the relevant period, the subject firm does not import completed software on physical media that is like or directly competitive with that which was produced at the subject facility. Business development, design, testing, and packaging remain in the United States.

A National Import Specialist was contacted at the U.S. Customs Service to address whether software could be described as an import commodity. The Import Specialist confirmed that electronically transferred material is not a tangible commodity for US Customs purposes. In cases where software is encoded on a medium (such as a CD Rom or floppy diskette), the software is given no import value, but rather evaluated exclusively on the value of the carrier medium.. This standard is based on Treasury Decision 85-124 as issued on July 8, 1985 by the U.S. Customs Service.

In conclusion, this decision states that "in

determining the customs value of imported carrier media bearing data or instructions, only the cost or value of the carrier medium itself shall be taken into account. The customs value shall not, therefore, include the cost or value of the data or instructions, provided that this is distinguished from the cost or the value of the carrier medium."

Finally, the North American Industry Classification System (NAICS), published by the U.S. Department of Commerce, designates all manner of custom software applications and software systems, including analysis, development, programming, and integration as "Services"

(see NAICS #541511 and #541512.)

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, **D.C.**, this 3rd day of February, 2003.

Note by M. Bain – this is not a typo – the official letter is dated 2003… it should be 2004.

Signature

ELLIOTT S. KUSHNER
Certifying Officer, Division of
Trade Adjustment Assistance