

like or directly competitive with articles which are produced or services which are supplied by such firm; and

(ii) The shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

During the remand investigation, the Department confirmed all previously collected information, obtained additional information from the subject firm regarding domestic and foreign operations, solicited input from the Plaintiffs, and addressed all of the Plaintiffs' allegations. At the time of the remand investigation, the subject firm was in the process of transferring the corporate headquarters facility from Lake Forest, California to Irvine, California. AR 213.

The information the Department received on remand contained more detail regarding the operations of the subject firm domestically and abroad. In order to determine whether there was a shift abroad of the engineering services provided by the subject worker group, the Department had to first determine whether the subject firm employs engineers at its facilities in Asia that supply engineering services like or directly competitive with those supplied by the subject worker group at the Lake Forest, California facility.

The investigation revealed that the business model of the subject firm is to develop new products domestically and carry out the manufacturing at its facilities overseas. AR 152, 212–218, 228–231, 244, 245–246, 271–279. After the design and development of the products is provided by the subject worker group, the production takes place at the foreign facilities, a process that the subject firm did not change during the relevant time period for the investigation of this petition. AR 152, 212–218, 228–231, 244, 245–246, 271–279.

Although the Plaintiffs declare that the subject firm shifted out of the country engineering services like or directly competitive with those provided by the subject worker group (AR 154–182), based upon the data collected during the remand investigation, the Department determines that engineers employed at foreign facilities of the subject firm and the engineers employed by the subject firm domestically do not perform like or directly competitive functions. AR 152, 212–218, 228–231, 244, 245–246, 271–279. Because of the stage of production at which the functions are performed, the work performed by the engineers domestically and the engineers abroad

is not interchangeable. AR 152, 212–218, 228–231, 244, 245–246, 271–279.

The findings confirmed that the workers were not impacted by a shift in services or foreign acquisition of services as the work supplied by the worker group abroad cannot be interchanged with the work provided by the domestic engineers. AR 152, 212–218, 228–231, 244, 245–246, 271–279. According to the subject firm, the engineering work performed abroad not only requires the engineers to be present at the manufacturing location, but is also different and less complex than the development work performed by the domestic engineers. AR 152, 212–218, 228–231, 244, 245–246, 271–279. Therefore, the Department determines that the work performed overseas did not contribute importantly to worker separations domestically because the services are not like or directly competitive.

Regarding the Plaintiffs' allegation that the subject firm brought foreign workers to be trained at the Lake Forest, California facility, the subject firm asserted that the firm's business model calls for the development of products domestically and for manufacturing at foreign facilities. AR 152, 212–218, 228–231, 244, 245–246, 271–279. However, the firm states that the foreign engineers still must be knowledgeable about the new products in order to carry out their work, so foreign engineers visit the United States to train on the new products to oversee the production at the manufacturing facilities. Consequently, the training of foreign workers in the U.S. does not show that the roles of the domestic and engineers abroad are interchangeable. AR 152, 212–218, 228–231, 244, 245–246, 271–279.

The Plaintiffs submitted a list of job announcements posted by the subject firm in Malaysia. AR 154–182. The subject firm maintains that at the time of the domestic reduction in force in late 2008 and early 2009, hiring efforts on a global level were suspended. AR 208–218. The Department collected employment numbers of engineers at Lake Forest, California, Malaysia, and Thailand. AR 271–285. The numbers revealed that employment of engineers decreased from December 2008 to June 2009, but started to increase at all three locations in late 2009. AR 241, 242, 243, 271–285. Nonetheless, the Department does not consider the services of the domestic engineers like or directly competitive with those provided by the engineers at the production facilities overseas. Therefore, the employment levels in these groups are not pertinent to the outcome of the investigation.

Plaintiffs also alleged that increased imports of hard disk drives contributed to worker separations. AR 154–182. Aggregate U.S. imports of hard disk drives or articles like or directly competitive declined in period under investigation. Nonetheless, the Department determined that increased imports of articles could not have contributed to worker separations because the subject firm develops hard disk drives domestically and manufactures them at the facilities in Asia. Therefore, an increase in imports of articles could not have contributed to a decline in the engineering services supplied by the subject worker group.

For Section 222(a)(A)(ii)(II)(bb) of the Act to be met, imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, must have increased. Because the subject firm does not produce articles like or directly competitive with hard disk drives domestically, this criterion is not met.

Based on a careful review of previously submitted information and new information obtained during the remand investigation, the Department reaffirms that the petitioning workers have not met the eligibility criteria of Section 222(a) of the Trade Act of 1974, as amended.

Conclusion

After careful reconsideration of the administrative record, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance applicable to workers and former workers of Western Digital Technologies, Inc., Hard Drive Development Engineering Group, Irvine (formerly at Lake Forest), California.

Signed at Washington, DC, this 23rd day of September 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

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U.S. DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,152]

CompONE Services, LTD, Ithaca, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application received September 6, 2011, a worker requested administrative reconsideration of the negative

determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers at CompONE Services, LTD, Ithaca, New York (CompONE Services). The negative determination was issued on August 3, 2011. The Department's Notice of Determination was published in the **Federal Register** on August 18, 2011 (76 FR 51435). The workers of CompONE Services are engaged in activities related to the supply of medical billing and coding services.

The petition was filed on behalf of "medical billers" workers at CompONE Services, LTD, Ithaca, New York. The petition states that the service supplied by CompONE Services is being shifted to an affiliated facility in Vietnam.

The negative determination was based on the Department's findings that CompONE Services does not produce an article within the meaning of Section 222(a) or Section 222(b) of the Act. In order to be considered eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, the worker group seeking certification (or on whose behalf certification is being sought) must work for a "firm" or appropriate subdivision that produces an article.

Pursuant to 29 CFR 90.18(c), administrative 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 request for reconsideration asserts that "an error has been made interpreting whether the facts of our case fit the criteria required by the statute."

After the Trade Act of 2009 expired in February 2011, petitions for TAA were instituted under the Trade Adjustment Assistance Reform Act of 2002 (Trade Act of 2002). The petition for CompONE Services was instituted on May 5, 2011. Therefore, the statute applicable to TA-W-80,152 is the Trade Act of 2002.

Section 222 of the Trade Act of 2002 establishes the worker group eligibility requirements. The requirements include either "imports of articles like or directly competitive with articles produced by such firm or subdivision have increased" or "a shift in production by such workers' firm or

subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision." The statute does not provide as a basis for certification a shift in the supply of services to a foreign country.

After careful review of the request for reconsideration, previously submitted materials, the applicable statute, and relevant regulation, the Department determines that there is no new information, mistake in fact, or misinterpretation of the facts or of the law.

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 16th day of September 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-80,001]

Mercer (US), Inc., a Subsidiary of Mercer LLC, a Subsidiary of Mercer, Inc., a Subsidiary of Marsh & McLennan Companies, Inc., National Accounting Center Department, Chicago, IL; Notice of Negative Determination Regarding Application for Reconsideration

By application received July 22, 2011, a worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers Mercer (US), Inc., a subsidiary of Mercer LLC, a subsidiary of Mercer, Inc., a subsidiary of Marsh & McLennan Companies, Inc., National Accounting Center Department (NAC), Chicago, Illinois (Mercer (US), Inc., National Accounting Center Department). The negative determination was issued on June 3, 2011. The Department's Notice of Determination was published in the **Federal Register** on June 17, 2011 (76 FR 35476). The workers of Mercer (US) Inc., National Accounting Center Department are engaged in activities

related to the supply of commission and cash receipt processing services.

The petition was filed on behalf of "national accounting center" workers at Mercer (US), Inc., Chicago, Illinois. The petition states that Mercer (US), Inc. "shifted production to India."

The negative determination was based on the Department's findings that Mercer (US), Inc. does not produce an article within the meaning of Section 222(a) or Section 222(b) of the Act. In order to be considered eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, the worker group seeking certification (or on whose behalf certification is being sought) must work for a "firm" or appropriate subdivision that produces an article.

In the request for reconsideration, the petitioner asserts that subject worker group separations were due to a shift to India and stated that other similar firms have employed worker groups eligible to apply for TAA.

The determinations referenced in the request for reconsideration are March USA, Inc., NA Controllershship Division, Chicago, Illinois, and HSBC Bank USA, Trade and Supply Chain Department, Brooklyn, New York (TA-W-71,889 issued on October 28, 2009; and TA-W-73,191 issued on May 17, 2011 respectively).

Workers covered by TA-W-71,889 and TA-W-73,191 were eligible to apply for worker adjustment assistance because the worker group eligibility requirements of the Trade and Globalization Adjustment Assistance Act of 2009 (Trade Act of 2009) was satisfied.

Pursuant to 29 CFR 90.18(c), administrative 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.

After the Trade Act of 2009 expired in February 2011, petitions for TAA were instituted under the Trade Adjustment Assistance Reform Act of 2002 (Trade Act of 2002). Therefore, the statute applicable to TA-W-80,001 is the Trade Act of 2002. The applicable regulation is codified in 29 CFR Part 90, Subpart B.

Section 222 of the Trade Act of 2002 establishes the worker group eligibility