

U.S. DEPARTMENT OF LABOR

**SECRETARY OF LABOR
WASHINGTON, D.C.**

In the Matter of)
METLAKATLA INDIAN COMMUNITY) Case No. **81-CTA-268**

)

ORDER REINSTATING DECISION

On September 21, 1983, upon consideration of a request **therefor** by the Grant Officer, I issued an order asserting my jurisdiction in the above-captioned case, and vacating and staying the decision of the Administrative Law Judge (ALJ) pending my final determination in the matter.

I did so in the light of (1) the issuance on August 22, 1983, of an order by the ALJ in which -- responding to the Grant Officer's motion for reconsideration **of the** ALJ decision issued on May 18, 1983 -- he affirmed that decision in part and modified it in part; and (2) the CETA regulation, at 20 CFR 676,91(f), which provides that the **ALJ's** decision "**shall** become the final decision of the Secretary unless the Secretary modifies or vacates the decision within 30 days after it is issued?

Counsel for the Metlakatla Indian Community (Metlakatla) have subsequently submitted a pleading contending that my assertion of jurisdiction was invalid in that it occurred more than 30 days after the issuance of the **ALJ's** decision of May 18, 1983.

Upon further consideration of the matter, I am persuaded that -- with respect to the issue which occasioned my assertion of **jurisdiction**, viz., the issue of whether Metlakatla erred in providing CETA

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Indian-program benefits to a member of the Metlakatla community who was not of Indian descent -- the controlling date with respect to the 30 day time limit specified in 20 CFR 676.91(f) was not August 22, 1983 (the date of issuance of the **ALJ's** reconsideration order) but rather May 18, 1983 (the date of issuance of his initial decision). In his reconsideration order, the **ALJ** (1) affirmed his previously announced holding regarding the above-described issue; and (2) modified his May 18 decision **only** with respect to the form of repayment of the disallowed amount: Having ordered in his May 18 decision that Metlakatla "shall repay disallowed costs totalling \$6,827 by devoting non-CETA resources to its current CETA program," the ALJ in his August 22 Order directed instead that repayment shall be by cash reimbursement unless the parties agree to some other method of payment. He explained that the May ruling on that issue had resulted from his mistaken belief that the Grant Officer. **had** already agreed to in-kind rather than cash reimbursement.

Metlakatla argued that I lacked the right to assert jurisdiction in this matter more than 30 days after the **ALJ's** May decision, notwithstanding the **ALJ's** August reconsideration order. It contended that the latter order was legally nugatory in that, upon the passage of 30 days after his issuance of the May decision, that decision became final and the ALJ thereby lost all jurisdiction in the case.

With respect to the issue that occasioned my assertion of

jurisdiction, I am now persuaded that, as of the date of my doing so I no longer had the authority under the provisions of 20 CFR 676.91(f), to modify the **ALJ's** holding. That is so whether or not the ALJ had the authority in August to issue a reconsideration order, because his August reconsideration order in no way modified his May holding on that issue.

I do not agree, however, with **Metlakatla's** contention that the **ALJ loses** all jurisdiction with respect to a CETA case once 30 days have passed and his initial decision has become final:

(1) 20 CFR 676.89(a) provides that "[o]n any procedural question not regulated by this subpart [F], the Act, or the Administrative Procedure Act, the Administrative Law Judge shall be **guided to**

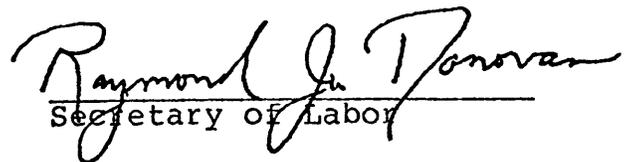
the extent possible by any pertinent provisions of the Federal

Rules of Civil Procedure [FRCP]" (2) Rule 60(b) of the FRCP provides that, "[o]n motion, and upon such terms as are just, the court may relieve a party . . . from final judgment, order, or proceeding for the following reasons: (1) mistake, . . . or (6) any other reason justifying relief from the operation of the judgment . . . The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken." (3)

Although the CETA rules do not expressly authorize the ALJ to act in accordance with Rule 60(b) of the FRCP after a decision by him has become final action, he is implicitly delegated the authority to do so by the provisions of 20 CFR 676.89(a).

In this case, the ALJ certainly had the authority to issue his August reconsideration order: (1) It was moved that he do so. (2) His May-decision specification of in-kind payment of the disallowed amount resulted from a mistake: his mistaken belief that the Grant Officer had agreed to repayment in that manner. (3) His August specification of cash repayment (unless the parties agreed otherwise) relieved the Grant Officer from a mistakenly imposed provision: if his May decision had said nothing at all about the method of repayment, the result would have been the same as provided in his August order; thus his August modification in meaning and effect **"relieve[d] a party [the Grant Officer] ... from a [mistakenly imposed or in] a final judgement."** In view of the foregoing, I am not persuaded that the **ALJ's** August 1983 reconsideration must, or should,, be set aside.

Accordingly, it is Ordered that the Administrative Law Judge's May 18, 1983, Decision and Order on Joint Motions for Summary Judgement, as modified by his August 22, 1983, Order on reconsideration, IS REINSTATED as the final action of the Secretary, effective immediately: Provided, however, That this Order is not to be construed as an **expression of** my opinion, one way or the other, with regard to the contents of the Administrative Law Judge's decision and subsequent order.


Secretary of Labor

Dated: April 30, 1984
Washington, D.C.

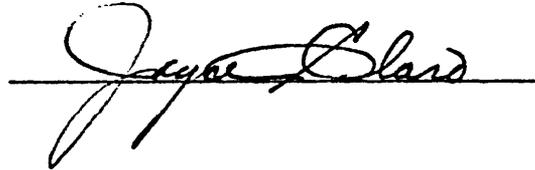
CERTIFICATE OF SERVICE

Case Name: Metlakatla Indian Community

Case No.: **81-CTA-268**

Document: Order Reinstating Decision

The above-referenced document was mailed to the persons listed below on April 30, 1984.



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