

THE UNDER SECRETARY OF LABOR

WASHINGTON, D. C.
20210



_____)
 In the Matter of)
)
 ERNESTINE FLORES AND)
 YOUNGSTOWN CITYWIDE HOUSEHOLD)
 TECHNICIANS, INC.)
 Complainants)
 v.)
)
 CITY OF YOUNGSTOWN AND TRUMBULL)
 COUNTY EMPLOYMENT AND TRAINING)
 AGENCY AS LEAD AGENCY FOR)
 NORTHEASTERN OHIO EMPLOYMENT)
 AND TRAINING CONSORTIUM (NOETC))
 Respondents)
 _____)

Case No. 81-CETA-110

REMAND ORDER

Now before me in the above-captioned case is an Order by the United States Court of Appeals for the Sixth Circuit (City of Youngstown v. United States Department of Labor, No. 83-3806, issued July 20, 1984) remanding "this cause . . . to the Secretary of the Department of Labor for review and appropriate action not inconsistent with this decision."

The Court indicates in its Order that both the petitioner and respondent before it, respectively the City of Youngstown (City) and the U.S. Department of Labor (USDOL), appear to be in agreement that the USDOL Administrative Law Judge (ALJ) erred in (i) failing to notify the City of the ALJ hearing, and then, on the basis of that proceeding, (ii) issuing a Decision and Order awarding the complainant, Ms. Ernestine Flores, back pay, and directing the City to pay it to her.

In examining the **ALJ's** decision, I also note that the **CETA** prime sponsor of the program in which Ms. Flores was involved, the Northeastern Ohio Employment and Training Consortium (NOETC), was during the events in question a consortium of four political jurisdictions, i.e., the City of Youngstown, Balance of **Mahoning** County, Trumbull County, and Columbiana County, and that NOETC was subsequently terminated. If NOETC were still in existence, it would be liable for any back pay due Ms. Flores. *These* facts suggest the possibility that all four of the political jurisdictions participating in the consortium--not only the City, but the three counties as well--may be residually liable for any obligations of NOETC to Ms. Flores. Under these circumstances, I am persuaded that not only the City but also the three counties referred to in the **ALJ's** decision should be notified of any further administrative adjudication proceedings in this matter.

In view of the likelihood that further evidentiary proceedings will be required, I am persuaded that this matter should be remanded forthwith to the Office of Administrative Law Judges for such further proceedings as may be necessary and the issuance of a new decision.

Accordingly, it is Ordered that the Decision and Order issued in this matter by an Administrative Law Judge of this Department on September 16, 1983, is vacated, and that this

case is remanded for further proceedings, and a new decision, consistent with this Order and the above-described Order of the U.S. Court of Appeals for the Sixth Circuit.

Copies of the Court's Order and of the pleadings addressed to the Court by the City and th USDOL are appended hereto.



Under Secretary of Labor

Dated: **NOV 26 1984**
Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: ERNESTINE FLORES AND YOUNGSTOWN CITYWIDE HOUSEHOLD
TECHNICIANS, INC., v. CITY OF YOUNGSTOWN AND
TRUMBULL COUNTY EMPLOYMENT AND TRAINING AGENCY
AS LEAD AGENCY FOR NORTHEASTERN OHIO EMPLOYMENT
AND TRAINING CONSORTIUM (NOETC)

Case No.: 81-CETA-110

Document: REMAND ORDER

This is to certify that a copy of the foregoing document
was sent to the following persons at the addresses below on
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MOBILE **CONSORTIUM** OF CETA,
ALABAMA, Petitioner,

v.

UNITED STATES DEPARTMENT OF
LABOR, **Respondent.**

No. 33-7469.

United States Court of **Appeals,**
Eleventh **Circuit.**

Nov. 5, 1984.

Sponsor under Comprehensive Employment and Training Act sought review of **final** order of Secretary of Labor requiring repayment of misspent CETA grant funds. The Court of Appeals, George C. Young, District Judge, sitting by designation, held that: (1) it was within Secretary's authority to order repayment of misspent **CETA** funds from **non-CETA** sources, and (2) disallowance of certain funds on basis of contradictory *responses listed* on signed questionnaires or interview sheets or on basis of facial irregularities in applications was supported by substantial evidence.

Affirmed.

1. United States ⇐82(1)

It was within authority of Secretary of Labor to order repayment of misspent Comprehensive Employment and Training Act funds from **non-CETA** sources. Comprehensive Employment and Training Act of **19'73, § 602(b)**, as amended, 29 U.S.C. (1976 **Ed.**) § 962(b).

2. United States ⇐82(7)

In seeking review of final order of Secretary of Labor requiring repayment of

misspent Comprehensive Employment and Training Act funds, consortium of city and counties had burden of demonstrating that contested participants were eligible under applicable CETA guidelines. Comprehensive Employment and Training Act of **19'73, § 2 et seq., as amended, 29 U.S.C. (1976 Ed.) § 801 et seq.**

3. United States ⇐82(7)

Secretary of Labor's findings of fact **concerning eligibility** of participants under applicable Comprehensive Employment and Training Act guidelines are **generally** conclusive if supported by "substantial evidence." Job Training Partnership Act, **§ 181(e)**, 29 U.S.C.A. **§ 1591(e); Comprehensive Employment and Training Act of 1973, §§ 2 et seq., 107(b)**, as amended, 29 U.S.C. (1976 Ed.) **§§ 801 et seq., 817(b).**

4. United States ⇐82(1)

Where Comprehensive Employment and Training Act participants' applications were contradicted by responses listed on signed questionnaires or interview sheets, administrative law judge could properly choose **to** believe latter. Comprehensive Employment and Training Act of 19'73, **§ 2 et seq., as amended, 29 U.S.C. (19'76 Ed.) § 801 et seq.**

5. United States ⇐82(1)

Administrative law judge could **disallow** Comprehensive Employment and Training Act payments to participants based solely on facial irregularities in applications where alterations and discrepancies in **applications** appeared in responses directly keyed to applicants' eligibility. Comprehensive Employment and Training Act of 1973, **§ 2 et seq., as amended, 29 U.S.C. (1976 Ed.) § 801 et seq.**

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The Synopsis, Syllabi and Key Number Classification
constitute no part of the opinion of the court.

6. Administrative Law and Procedure
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Hearsay reports may constitute substantial evidence in administrative proceedings, even when contradicted by direct evidence, if such reports have "rational probative force."

Petition for Review of an Order of the Department of Labor.

Before FAY and JOHNSON, Circuit Judges, and YOUNG ●, District Judge.

GEORGE C. YOUNG, District Judge:

Petitioner, Mobile Consortium of **CETA**¹ ("Consortium"), a prime sponsor under the Comprehensive Employment and Training Act ("**CETA**") of 1973, 29 U.S.C. § 801 et seq., seeks review of a final order of the Secretary of Labor requiring the Consortium to repay **\$393,674.16** in misspent **CETA** grant funds. The order stems from a labor department audit of expenditures by the Consortium covering the period of June 3, 1974 through September 30, 1975. Based on the auditors' findings, the department's grant officer disallowed expenditures in the amount of **\$587,933.34**. That decision was reviewed by an administrative law judge (**ALJ**), who reduced the disallowance to **\$393,674.16** and ordered the Consortium to repay that amount to the Department of Labor out of **non-CETA** funds. That order became the decision of the Secretary of Labor. In this petition for review, the Consortium (1) contests the Secretary's authority under the 1973 Act to or-

* Honorable George C. Young, US. District Judge for the Middle District of Florida, sitting by designation.

der repayment of misspent funds, and (2) challenges the Secretary's findings of fact with respect to **\$31,291.66** of the disallowed funds.

[I] At least four circuit courts have held that the Secretary's power under § 602(b) of the 1973 version of **CETA**, to make "necessary adjustments in payments on account of overpayments or underpayments", created an implied power to recoup misspent **CETA** funds. *Atlantic County, New Jersey v. Department of Labor*, 715 F.2d 834 (3rd Cir.1983); *North Carolina Commission of Indian Affairs v. Department of Labor*, 725 F.2d 238 (4th Cir.1984); *Texarkana Metropolitan Area Manpower Consortium v. Donovan*, 721 F.2d 1162 (8th Cir.1983); *California Tribal Chairman's Association v. Department of Labor*, 730 F.2d 1289 (9th Cir.1984); cf. *Bell v. New Jersey*, 461 U.S. 773, 103 S.Ct. 2187, 2197, 76 L.Ed.2d 313 (1983) (same construction of similar language in education aid statutes). We find the reasoning of those decisions persuasive, and accordingly conclude that it was within the Secretary's authority to order petitioner to repay misspent **CETA** funds from **non-CETA** sources.

The Consortium specifically challenges the Secretary's disallowance of **\$31,291.66** in grants for Title III programs, based on a finding that the Consortium failed to establish the eligibility of 72 participants. At the hearing before the administrative law judge, the Consortium relied solely upon the job applications of those participants to establish their eligibility. In 39 cases, however, information stated in the job applica-

1. Petitioner consists of the City of Mobile and the Counties of Mobile, Baldwin, and Escambia, Alabama.

MOBILE CONSORTIUM OF CETA v. U.S. DEPT. OF LABOR

tions materially conflicted with information furnished to labor department auditors by the participants or their families in questionnaires or personal interviews. The ALJ found these questionnaire and interview responses, indicating non-eligibility, to be more credible than the contrary responses given in the job applications. In the remaining 33 cases, auditors were unable to obtain information about the participants through questionnaires or interviews. Although the job applications indicated that the participants were eligible, the applications contained serious facial irregularities. The ALJ observed that

“family size or income figures have been erased or altered or ... figures are written in different ink from the remainder of the application entries or in pencil or ink when the remainder is written in ink or pencil, respectively.”

Due to such irregularities, the ALJ concluded that the applications for these participants did not afford a reliable basis for determining eligibility.

[2, 3] Petitioner concedes that as the party requesting the administrative hearing, it shouldered the burden of “establishing the facts and the entitlement to the relief requested.” 20 C.F.R. § 676.90(b); *Quechann Indian Tribe v. Department of Labor*, 723 F.2d 733, 735 (9th Cir.1984); *State of Maine v. Department of Labor*, 669 F.2d 827, 829 (1st Cir.1982). In other

2. We reject petitioner’s argument that the disallowance was not supported by substantial evidence because questionnaire results and interview sheets were “hearsay evidence”, whereas the original applications were the Consortium’s “business records”. Hearsay reports may constitute substantial evidence in administrative proceedings, even when contradicted by direct evidence, if such reports have “rational probative force.” *Richardson v. Perales*, 402 U.S. 389, 407, 91 S.Ct. 1420, 1430, 28 L.Ed.2d 842 (1971);

words, the Consortium had the burden demonstrating that the contested participants were eligible under applicable C guidelines. Within this framework Secretary’s findings of fact are generally conclusive if they are supported by “substantial evidence.” 29 U.S.C. § 817(b) 29 U.S.C. § 1591(e).

[4-6] Our review of the record concludes us that the ALJ’s disallowance of \$31,291.66 in question was supported by substantial evidence. In the cases where the participants’ applications were contradicted by responses listed on signed questionnaires or interview sheets, the ALJ could properly choose to believe the latter particularly since the Consortium offered nothing to indicate eligibility apart from the applications themselves.² The Consortium strenuously challenges the ALJ’s disallowance of payments to 33 participants based solely on facial irregularities in the applications. We feel, however, that the alterations and discrepancies, appearing as they did in responses directly keyed to the applicant’s eligibility, provided a substantial basis upon which the ALJ could reasonably conclude that the eligibility of the participants had not been established. The ALJ very carefully examined each of the contested applications, and indeed reviewed the grant officer’s disallowance in 7 cases. Significantly, the Consortium offered no evidence to explain the discrepancies

School Board of Broward County. Florida H.E.W., 525 F.2d 900, 906 (5th Cir.1976). questionnaires and interview sheets relied by the ALJ possessed indicia of reliability of probative value comparable to those recognized in *Perales* and *School Board of Broward County*. We note that the ALJ rejected challenge to information given in job applications based on questionnaires or interview sheets which were unsigned or were otherwise materially flawed.

alterations appearing on the disallowed **ap-
plications**, or to verify the information **stat-
ed** in the applications. Accordingly, the **ALJ's** finding that the Consortium failed to carry its **burden** of proof in these cases was not improper.

For the foregoing reasons the final order **of** the Secretary, in its entirety, is **AF-
FIRMED**.