

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR  
WASHINGTON, D.C.

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UNITED STATES DEPARTMENT OF LABOR )

v. )

UTAH RURAL DEVELOPMENT CORPORATION )

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Case No. 83-CTA-211

ORDER DENYING MOTION TO RECONSIDER  
REMAND ORDER AND TO DISMISS

On July 23, 1985, the presiding Administrative Law Judge (ALJ) dismissed this case, wherein the Department was pursuing the recoupment of funds expended by Utah Rural Development Corporation (URDC) under a Comprehensive Employment and Training Act (CETA) grant. 29 U.S.C. §§ 801-999 (Supp. V 1981). These funds were disallowed by the Grant Officer after an audit. The ALJ's order of dismissal followed the interpretation in City of Edmonds v. United States Department of Labor, 749 F.2d 1419 (9th Cir. 1984), and Lehigh Valley Manpower Program v. Donovan, 718 F.2d 99 (3rd Cir. 1983), concerning the effect of the 120-day rule in Section 106(b) of CETA, 29 U.S.C. § 816(b).

The record indicates that the Regional Office of the Solicitor in Denver, Colorado, received a copy of the ALJ's decision on July 25, 1985, and that the Grant Officer's Motion to Alter or Amend the Judgment was mailed on August 2, 1985,

and received by the Office of Administrative Law Judges in San Francisco, on August 5, 1985. Counsel for URDC contends that such motion was untimely. I disagree. The Grant Officer's Motion, mailed on August 2, 1985, was served within the requisite 10 days from the entry of the ALJ's decision.<sup>1/</sup>

On September 13, 1985, the ALJ denied the Grant Officer's motion to amend the order of dismissal and served copies on the parties by mail. The Grant Officer filed exceptions to the ALJ's denial on October 15, 1985. This filing is timely when the time computation takes into account the five additional days added for a party to act when the service of a document requiring the action is made by mail.<sup>2/</sup>

Jurisdiction was asserted in this case on November 4, 1985, and the ALJ's decision was stayed, pending the Supreme Court's disposition of the 120-day issue. This issue was resolved by the Court in Brock v. Pierce County, \_\_\_ U.S. \_\_\_, 106 S.Ct. 1834 (1986). On June 30, 1986, I issued an order lifting the stay and remanding this case to the presiding ALJ for proceedings on the merits.

<sup>1/</sup> See Fed. R. Civ. P. 59(e). "Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment;" and 20 C.F.R. § 18.4(c)(2) (1986). "Service of all documents other than complaints is deemed effected at the time of mailing."

<sup>2/</sup> See 29 C.F.R. § 18.4(c) (1986). "Whenever a party has the right or is required to take some action within a prescribed period after the service of a pleading, notice, or other document upon said party, and the pleading, notice, or other document is served upon said party by mail, five (5) days shall be added to the prescribed period;" and

On July 3, 1986, URDC moved for reconsideration of the remand order, requesting dismissal of the case on the timeliness grounds described and disposed of above. URDC also claimed that the controlling regulation concerning the Secretary's final action required the Secretary to modify or vacate the ALJ's decision within 30 days after it is served. (Citing 20 C.F.R. § 676.91(f)). URDC initially cited this section of the regulations without giving a date. In its reply to the Grant Officer's brief, URDC states that it is relying on the prior version of § 676,91(f). This regulation was amended on May 9, 1984, 49 Fed. Reg. 19,640, to its present wording, see note 2 supra, which provides that the Secretary has 20 days from the filing of exceptions within which to decide whether to accept the case for review. URDC contends that the 1984 amendment was defective in its promulgation and therefore, devoid of regulatory value.<sup>3/</sup>

2/(continued)

20 C.F.R. § 676.91(f) (1986). "Final Decision. The decision of the administrative law judge shall constitute final action by the Secretary unless, within 30 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Secretary specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically urged shall be deemed to have been waived. Thereafter the decision of the administrative law judge shall become the final decision of the Secretary unless the Secretary, within 20 days of such filing, has notified the parties that the case has been accepted for review."

3/ Rather than briefing this argument URDC refers to an argument on this point submitted in another case, United States Department of Labor v. California Human Development Corporation, Case No. 84-CTA-20. While it may be proper to take administrative notice of a filing in another case, the contention as presented there was considered and denied. Order Denying Motion to Reconsider Remand Order and to Dismiss, Case No. 84-CTA-20, September 18, 1986.

I reject this contention. The 1984 amendment did **n**ot alter the rights or responsibilities of the parties in cases arising under CETA. It merely provided the Secretary with a limited amount of time after an exception had been filed to consider his decision whether to accept a case for review.

In addition; an administrative adjudication is not an appropriate vehicle to modify or rescind an outstanding regulation. Such modification or recession should be undertaken through the same procedures that were used to promulgate the regulation. See *Motor Vehicle Manufacturer's Association v. State Farm Mutual Insurance Co.*, 463 U.S. 29, 41, (1983); *National Wildlife Federation v. Clark*, 577 F.Supp. 825, 828 (D.C. 1984).

The motion to reconsider the remand order and to dismiss IS DENIED.<sup>4/</sup>

SO ORDERED.



Secretary of Labor

Dated: OCT 15 1986  
Washington, D.C.

<sup>4/</sup> Although not part of its motion, URDC has requested that all proceedings before the ALJ be stayed pending a ruling on the instant motion. This order renders moot that request.

CERTIFICATE OF SERVICE

Case Name: Utah Rural Development Corp. v. U.S. Department  
of Labor

Case No. : 83-CTA-211

Document : Order Denying Motion to Reconsider Remand Order  
and to Dismiss.

A copy of the above-referenced document was sent to the following  
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