

U.S. DEPARTMENT OF LABOR

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

DATE: April 20, 1990
CASE NO. 86-CTA-40

IN THE MATTER OF
CENTER FOR EMPLOYMENT TRAINING,
COMPLAINANT,

v.

U.S. DEPARTMENT OF LABOR,
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL DECISION AND ORDER

This case arises under the Comprehensive Employment and Training Act (CETA), 29 U.S.C. §§ 801-999 (Supp. V 1981).^{1/} On March 8, 1988, Administrative Law Judge (**ALJ**) Jeffrey Tureck issued a Decision and Order (D. and O.) affirming the Grant Officer's disallowance of \$13,186, in costs by the Center for Employment Training (CET), pursuant to its CETA grants.^{2/} The **ALJ** also found that CET was entitled to an "offset" of \$5,400,

^{1/} CETA has been repealed and replaced by the Job Training Partnership Act (JTPA), 29 U.S.C. §§ 1501-1781 (1982). Pending CETA administrative and judicial proceedings continue to be adjudicated under CETA. 29 U.S.C. § 1591(e).

^{2/} The underlying audit which gave rise to the Grant Officer's Final Determination and his consequent disallowances included six grants under CETA and one under **JTPA**. At issue before me are disallowances pertaining to four of the CETA grants.

thereby reducing the debt to be paid to the U.S. Department of Labor to \$7,786. D. and O. at 5. The Grant Officer timely **excepted** to the **ALJ's** decision and on April 15, 1988, the Secretary asserted **jurisdiction.**^{3/}

BACKGROUND

CET is a private, nonprofit corporation which provided job training services for migrant and seasonal farmworkers under CETA and JTPA grants. An audit of costs CET charged **to** its grants during the period from March 1, 1982, through December 31, 1983, resulted in the Grant Officer's disallowance of **\$31,171.**^{4/} Subsequent negotiations between CET and the Grant Officer reduced the disallowance to **\$13,186.**^{5/} The Final Determination was appealed to the Office of Administrative Law Judges by CET and its request for a hearing was granted on April 24, **1986.**^{6/} The hearing was held on April 23, 1987. D. and O. at 1.

DISCUSSION

CET is obligated to repay \$13,186, in disallowed costs to the Department of Labor. CET requested a hearing with regard to the Grant Officer's disallowance on only one finding, Number 7, of the four findings which resulted in disallowed costs in the

^{3/} In the Matter of Center for **Employment Training** v. U.S. Department of Labor, Case No. 86-CTA-40, Secretary's Order Asserting Jurisdiction and Notice of Briefing Schedule.

^{4/} Final Determination, issued February 14, 1986, by Charles A. Wood, Jr., Grant Officer. Administrative File (A.F.) at 23-35.

^{5/} Hearing Transcript (TR.) at 16-17.

^{6/} A.F. at 1-18.

Final Determination. D. and O. at 2. The disallowed **costs** of **\$9,023**, relating to the other three findings, Numbers 3, 4 and 5, therefore became **final.**^{7/} The **ALJ** determined that **CET** was obligated to repay the \$4,163, pertaining to finding Number 7. D. and O. at 4-5. **CET** did not file exceptions to this portion of the **ALJ's** decision so it, too, became a final **debt.**^{8/}

The Grant Officer excepted to the **ALJ's** determination that **CET** was entitled to an "**offset**" of \$5,400 against the disallowed costs. The basis for the offset was funds allegedly spent by **CET** as direct costs in support of four of the CETA program grants which exceeded the funding levels of those grants. D. and O. at 3-4.

The Grant Officer contends that the **ALJ** erred in applying

^{7/} Section 676.88 of 20 C.F.R. (1989) is entitled "**[i]nitial and final determination: request for hearing at the Federal level,**" and provides in pertinent part:

(f) Request for hearing The request for hearing . . . shall **specifically** state those provisions of the determination upon which a hearing is requested. Those provisions of the determination not specified for hearing . . . shall be considered resolved and not subject to further review.

^{8/} Section 676.91 of 20 C.F.R. is entitled "**[p]ost-hearing procedures,**" and provides in pertinent part:

(f) Final decision. The decision of the administrative law judge shall constitute final action by the Secretary unless, . . . 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.

these alleged excess expenditures against **CET's** debt without determining that such funds were specifically allowable and allocable grant **costs.**^{9/} I agree that allowable costs must conform to the applicable regulation governing CETA grants which provides that "[e]xcept as modified by these regulations, the cost principles to be used in determining allowable CETA costs are referenced in 41 C.F.R. 29-70.103 '**Cost-Principles.**'" 20 C.F.R. § 676.40-1(a).^{10/} The applicable cost principles provide:

In determining allowable costs under a grant or agreement, the DOL Agency shall use Federal cost principles referenced in this section which are applicable to the recipient's organization ... and shall allow only those costs permitted under the cost principles which are reasonable, allocable, necessary to achieve approved program goals, and which are in accordance with DOL Agency policy and terms of the grant or agreement. The following cost principles apply:

* * * *

(c) Other nonprofit organizations. OMB Circular A-122 entitled, "**Cost** principles for nonprofit organizations," provides principles for determining costs applicable to grants and agreements with nonprofit organizations.

OMB Circular No. A-122, Attachment A, Part A, is entitled "**BASIC** CONSIDERATIONS" and provides in pertinent part:

^{9/} Brief of the Grant Officer, dated July 15, 1988, at 3-6.

^{10/} The regulations in 41 C.F.R. Part 29-70 were last published in the Code of Federal Regulations in 1984. They have been superseded but remain applicable to all contracts (such as those at issue here) that preceded April 1, 1984, the effective date of the successor provisions. 41 C.F.R. Editorial Note at 2-3 (1989).

2. Factors affecting allowability of costs. To be allowable under an award, costs must meet the following general criteria:

- a. Be reasonable for the performance of the award and be allocable thereto under these principles.
- b. Conform to any limitation or exclusions set forth in these principles or in the award as to types or amount of cost items.
- c. ~~Be~~ consistent with policies and **procedures** that apply uniformly to both federally financed and other activities of the organization.
- d. Be accorded consistent treatment.
- e. Be determined in accordance with generally accepted accounting principles.
- f. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally financed program in either the current or a prior period.
- g. Be adequately documented.

* * * *

4. Allocable costs.

a. A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Government award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award.

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received.

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

b. Any cost allocable to a particular award or other cost **objective** under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.

(Emphasis supplied.)

The record in this case does not support a finding that **CET's** claimed excess costs meet the mandatory regulatory standards. **CET's** acting fiscal officer, Joseph D. Jimenez testified that CET incurred substantial overexpenditures on each of the CETA grants in question, which costs had not been presented for payment and therefore had not been reimbursed by the Department of **Labor**.^{11/} CET introduced into evidence a one page spread sheet, created by Mr. Jimenez in preparation for his hearing testimony, that summarized the grant budgets, their purported total costs and the total costs billed against the grants, and that purported to show the level of these **overexpenditures**.^{12/} CET introduced into evidence a copy of the auditors' worksheet containing summary figures in broad

^{11/} TR. at 94-189.

^{12/} **Complainant's** Exhibit (C.X.) #1; TR at 98.

categories that pertained to one of the CETA grants in question.^{13/} CET also introduced into evidence a spread sheet pertaining to another of the CETA grants which summarized the expenditures of that grant's 10 project areas over two grant periods.^{14/}

simply stated, CET alleges that it spent more than the amount of grants on the four CETA grant programs and it wants credit for these excess costs (expenditures). Although the government challenged the admissibility of the documents offered to support these costs,^{15/} there does not appear to be a dispute that CET incurred some additional expenditures.

However, the issue before me is not the fact of the excess costs, but whether the documentation offered at the hearing, and presently before me in the record, concerning such additional costs meets the regulatory criteria for allowable and allocable costs set forth above. The pertinent documents admitted into evidence are essentially broad category cost summaries developed from CET's General Ledger entries by Mr. Jimenez in preparation for his testimony at the hearing.^{16/} Mr. Jimenez testified that he did not examine the detailed backup or "source documentation" that an auditor would, to verify the allowability and

^{13/} C.X. #4.

^{14/} C.X. #2.

^{15/} TR. at 117-18, 119-20, 124-26, 158.

^{16/} TR. at 168-75.

allocability of the excess costs against the CETA grants. TR. at 172. However, pertinent cost principles require that direct costs be specifically identified with a particular final cost objective, and cost summaries extrapolated from general ledger entries do not provide the necessary **specificity.**^{17/}

The record indicates that prior to the final audit report, **the** auditors adjusted "cost allocation variances" when CET supplied supporting **documentation,**^{18/} and reduced recommended disallowances when CET documented unbilled costs against overcharges to grant **funds.**^{19/} However, there is no documentary evidence that the claimed excess costs would have been recommended as allowable by the auditors. Mr. Jimenez asserts that the auditors would have reviewed **all of CET's** costs,

^{17/} OMB Circular No. A-122, Attachment A, Part B is entitled "Direct Costs" and provides in pertinent part:

1. Direct costs are those that can be identified specifically with a particular final cost objective: i.e., a particular award, project, service or other direct activity of an organization. However, a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstances, has been allocated to an award as an indirect cost. Costs identified specifically with awards are direct costs of the awards and are to be assigned directly thereto. costs identified specifically with other final cost objectives of the organization are direct costs of those cost objectives and are not to be assigned to other awards directly or indirectly.

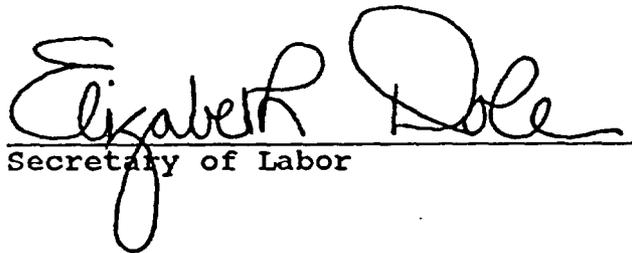
^{18/} C.X. #3.

^{19/} A.F. at 40-41.

including the overexpenditures, and would have identified those costs recommended to be disallowed. Tr. at 187-189. However, the audit report indicates that fewer than 12 percent of the expenditures for one grant were audited and fewer than 50 percent for another were audited. A.F. at 55. The record therefore fails to establish that the costs CET and the **ALJ** would have met **"offset"** meet the criteria that **"must"** be shown before costs are **"allowable."** The failure to present **"adequate"** or indeed any specific documentation is fatal. See OMB Cir. No. A-122 quoted supra at 5. Nor does the record demonstrate any basis for determining the allocability of these unspecified excess costs. Accordingly, the **ALJ's** finding that CET is entitled to have \$5,400 offset against **CET's** debt to the Department of Labor IS REVERSED.

The Center for Employment Training IS ORDERED to pay the Department of Labor the sum of \$13,186, in non-federal funds.

SO ORDERED.


Secretary of Labor

Washington, D.C.

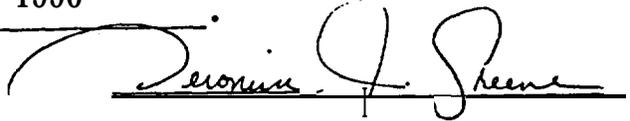
CERTIFICATE OF SERVICE

Case Name: In the Matter of Center for Employment and Training v. United States Department of Labor

Case No. : 86-CTA-40

Document : Final Decision and Order

A copy of the above-referenced document was sent to the following persons on APR 20 1990



Terence J. Sheene

CERTIFIED MAIL

James L. Feldesman, Esq.
Jeffrey K. **Stith**, Esq.
Feldesman & Tucker
2001 L Street, N.W.
Suite 300
Washington, DC 20036

Russell Tershy
Executive Director
Center for Employment Training
701 Vine Street
San Jose, CA 95110

HAND DELIVERY

Associate Solicitor for Employment
and Training Legal Services
Attn: Harry Sheinfeld, Esq.
U.S. Department of Labor
200 Constitution Ave., N.W.
Room N-2101
Washington, D.C. 20210

REGULAR MAIL

David O. Williams
Office of Program & Fiscal
Integrity
Charles Woods
Office of Grant Closeout
& Audit Resolution
Linda Kontnier
Office of Debt Management
U.S. Department of Labor/ETA
200 Constitution Ave., N.W.
Room N-4671
Washington, D.C. 20210

4

Hon. Nahum Litt
Chief Administrative Law Judge
Office of Administrative Law Judges
1111 20th Street, N.W.
Suite 700
Washington, D.C. 20036

Hon. John M. Vittone
Deputy Chief Administrative Law Judge
Office of Administrative Law Judges
1111 20th Street, N.W.
Suite 700
Washington, D.C. 20036

Hon. Jeffrey Tureck
Office of Administrative Law Judges
1111 20th Street, N.W.
Suite 700
Washington, DC 20036
