

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: September 25, 1990

CASE NO. **83-CTA-25**

IN THE MATTER OF
UNITED STATES DEPARTMENT OF LABOR,
COMPLAINANT,

v.

COLORADO BALANCE OF STATE/CETA,
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL DECISION AND ORDER

This case, arising under the Comprehensive Employment and Training Act (CETA), 29 U.S.C. §§ 801-999 (Supp. V **1981**), ^{1/} involves an audit of CETA grants to Colorado Balance of State (CBOS) during the period of January 1, 1978, through December 31, 1979. ^{2/} On March 24, 1986, Administrative Law Judge (**ALJ**) Alfred Lindeman issued a Decision and Order (D. and O.) modifying the Grant Officer's Final Determination of disallowed costs, by affirming the disallowances in part and reversing in part. The

^{1/} CETA has been repealed and replaced by the Job Training Partnership Act (JTPA), 29 U.S.C. §§ 1501-1781 (**1982**), but CETA administrative or judicial proceedings pending on October 13, 1982, or begun between October 13, 1982 and September 30, 1984, were not affected. 29 U.S.C. § 1591(e) (1982).

^{2/} Of the four CETA grants reviewed - Numbers 99-9-060-30-42, 99-8-083-19-58, 99-8-1478-19-60 and 99-8-1930-19-159 - only the latter two are discussed herein. As in the **order** under review, these grants will be identified by the last two or three digits.

Respondent, CBOS, timely filed exceptions to the **ALJ's** decision, challenging all but two of the **ALJ's** disallowances, i.e., \$639 in finding 1 and \$160 in finding 5. The Grant Officer has not responded to the Secretary's Order Lifting Stay and Establishing Briefing Schedule, issued on March 30, 1988, or to the initial brief filed by CBOS. ^{3/}

BACKGROUND

The Grant Officer issued a Final Determination on September 16, 1982, which disallowed costs totalling \$132,236 as a result of the underlying audit. See GX-A3. Subsequent to the issuance of the final determination, however, the parties settled portions of these costs, so that \$76,612 remained in dispute before the **ALJ**. At the hearing, the parties agreed that the amounts remaining in dispute were **as** follows:

- Finding 1: \$38,028 in administrative costs.
- Finding 2: Grant Officer agreed to allow these costs.
- Finding 3: \$6,455 in wage costs.
- Finding 4: \$395 in fringe benefits
- Finding 5: \$9,271 in training costs.
- Finding 6: \$22,463 in service costs.

^{3/} Subsequent to the CBOS submission of an April 11, 1986, letter of exceptions to the **ALJ's** D. and O., an Order Asserting Jurisdiction and Staying the Proceedings was issued on May 6, 1986, pending the Supreme **Court's** disposition in Pierce County v. United States, 759 **F.2d** 1389 (9th Cir. 1985), aff'd sub nom. Brock v. Pierce County, 476 U.S. 253 (1986). The Court's holding therein, that the Secretary does not lose the authority to recover misused funds after the expiration of the 120 day period specified in Section 106(b) of CETA, 29 U.S.C. § 816(b) (Supp. V 1981), disposes of such an issue in the instant case. See Alameda County v. U.S. Department of Labor, Sec. Decision and Order of Remand, Case No. 82-CETA-267 (June 16, 1988). To the extent that the **ALJ's** resolution of this issue conflicts with the **Court's** ruling in Brock v. Pierce County, the **ALJ's** D. and O. is vacated in pertinent part. See ALJ's D. and O. at 5.

In his Decision and Order, the **ALJ** affirmed the disallowances of amounts totalling \$37,527, and reversed the remaining disallowances in dispute. Although both parties filed Pre-Hearing Statements and Post-Hearing Briefs before the **ALJ**, only CBOS has participated before me. CBOS has taken exception to the following disallowances upheld by the **ALJ**:

Finding 1(d): \$5,154 in administrative costs.
Finding 5(b)(i): \$9,111 in training costs.
Finding 6(b)(i): \$22,463 in service costs.

DISCUSSION

The sole issue before me with respect to the excepted disallowances is whether CBOS has presented sufficient documentation to establish the eligibility of participants in training programs funded under Title III CETA grants. CBOS challenges the **ALJ's** affirmance of three disallowances by the Grant Officer, arguing that the remaining disallowed administrative, training and service costs relate to participants listed as ineligible under Grant No. 159. The parties stipulated to the names of questionable participants under Grants Nos. 60 and 159 prior to the hearing. **See RX1-SS2; RX2-C3b; RX2-C3a.** CBOS further asserts that the participant application forms completed for the eleven individuals in question, were submitted into the record and contain all the necessary information to establish participants' eligibility under the applicable regulations.

The party requesting a hearing before the **ALJ** has the burden of establishing the facts entitling it to the requested relief.

20 C.F.R. § 676.90(b) (1989). Thus, CBOS has the burden herein, of showing that sufficient documentation has been presented to establish the eligibility of questioned participants, in accordance with the pertinent regulations.

As CBOS states in its brief, the **ALJ's** decision is unclear and lacks specificity as to which named individuals were deemed ineligible and which grants were involved in disallowed costs. Furthermore, the **ALJ** does not address the documentary evidence submitted into the record by CBOS in support of the eligibility of challenged participants under Grants Nos. 60 and 159. CBOS' stated position on these excepted disallowances has not been controverted. Consequently, I have reviewed the record evidence in light of CBOS' uncontroverted assertions and the **ALJ's** apparent conclusion that only the eligibility of eleven specified participants under Grant No. 159 remain at issue. The parties stipulated to the names of participants deemed eligible and ineligible under Grants Nos. 60 and 159 prior to the **ALJ** hearing. Rxl-ss2.

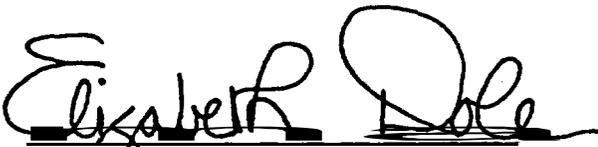
Based on review of the participant application forms provided by CBOS for the eleven individuals in question, **see RX2-C3b**, I conclude that sufficient documentation has been submitted for a determination of participant eligibility under the applicable regulations at 29 C.F.R. § 97.132. The proffered documentary evidence contains sufficient information to establish that each of the eleven challenged participants under Grant No. 159 was an underemployed or economically disadvantaged Native

American Indian as required for eligibility in a Title III training program. See RX2-C3b. I cannot discern from the record or the **ALJ's** D. and O. why this documentation may have been considered inadequate by the Grant Officer at the time of the hearing. Consequently, I reverse those disallowances upheld by the **ALJ**, which CBOS has challenged: \$5,154 in finding 1 for administrative costs; \$9,111 in finding 5 for training costs; and \$22,463 in finding 6 for service costs. The ordered repayment of the \$799 in disallowed costs not challenged by CBOS is affirmed.

ORDER

For the reasons provided herein, the request of Colorado Balance of State for reversal of disallowed costs totalling \$36,728 is granted. The **ALJ's** determination that Colorado Balance of State must repay to the U.S. Department of Labor, from non-Federal funds, \$639 in disallowed administrative costs, and \$160 in disallowed training costs is affirmed.

SO ORDERED.


Secretary of Labor

Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: In the Matter of United States Department of Labor
v. Colorado Balance of State/CETA

Case No. : 83-CTA-25

Document : Final Decision and Order

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