

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: March 11, 1991
CASE NO. **81-CTA-363**

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

v.

ROCKINGHAM/STRAFFORD EMPLOYMENT
AND TRAINING CONSORTIUM,
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

DECISION AND ORDER OF REMAND

This case arises under the Comprehensive Employment and Training Act (CETA or the Act), 29 U.S.C. §§ 801-999 (Supp. V 1981), ^{1/} and involves an audit of CETA grant expenditures by Rockingham/Strafford Employment and Training Consortium (RSETC) during the period from June 1, 1974, through September 30, 1978. As a result of the underlying audit, the Grant Officer issued a Revised Final Determination of allowed and disallowed costs on July 22, 1981, concluding that a total of \$106,150 in costs was disallowed. RSETC requested a hearing before the Office of

^{1/} CETA was repealed effective October 13, 1982, and replaced by the Job Training Partnership Act, 29 U.S.C. §§ 1501-1781 (1988). However, CETA continues to govern administrative or judicial proceedings pending on October 13, 1982, or begun between October 13, 1982, and September 30, 1984. 29 U.S.C. § 1591(e).

Administrative **Law** Judges. At the hearing the parties agreed that only \$46,280 of disallowed costs remained in dispute. The disputed disallowances arose in seven categories as follows:

1. \$1,048 allocation of costs for rent, supplies and equipment
2. \$15,350 enrollee **eligibility-** Rockingham County Community Action Program (CAP)
3. \$19,047 enrollee eligibility-Strafford County CAP
4. \$875 consulting fees-J. Batchelder
5. \$1,780 consulting fees-R. Haubrick, D. **LaPlant**
6. \$7,035 recreation and transportation program
7. \$1,148 recreation cost-clambake

The Decision and Order (D.O.) of Administrative Law Judge (**ALJ**) Robert M. **Glennon** concluded that an equitable waiver of reimbursement of the disallowed expenditures was appropriate in the circumstances presented in this case. The Grant Officer takes exception to the **ALJ's** D.O., arguing that the **ALJ's** decision to waive recoupment of misspent CETA funds is improper and must be reversed.

Based on a review of the record, including both parties' submissions before the Secretary, I adopt the **ALJ's** factual findings but reverse his conclusions on the issue of equitable waiver of recoupment. The **ALJ's** factual findings are fully supported by the record and are not disputed by the parties.

The Grant Officer challenges the **ALJ's** decision waiving reimbursement of the disallowed costs as not in accordance with the Act, its implementing regulations and the pertinent **caselaw**. **The** courts have held that pursuant to Section 106 of CETA, 29 **U.S.C. §** 816(d)(2), the Secretary has discretionary authority to waive the Department of Labor's (**DOL's**) right to recoupment. **See** Action, Inc. v. Raymond J. Donovan, 789 **F.2d** 1453, 1459-60 (10th Cir. 1986); Quechan Indian Tribe v. U.S. Department of Labor, 723 **F.2d** 733, 736 (9th Cir. 1984). The implementing regulation, 20 C.F.R. § 676.88(c), sets forth five factors to be considered in determining whether to waive recoupment of misspent CETA **funds.**^{2/}

As this case arises within the jurisdiction of the United States Court of Appeals for the First Circuit, and because RSETC

^{2/} (c) Allowability of certain questioned costs. In any case in which the Grant Officer determines that there is sufficient evidence that funds have been misspent, the Grant Officer shall disallow the costs, except that costs associated with ineligible participants and public service employment programs may be allowed when the Grant Officer finds:

(1) The activity was not fraudulent and the violation did not take place with the knowledge of the recipient or subrecipient; and

(2) Immediate action was taken to remove the ineligible participant; and

(3) Eligibility determination procedures, or other such management systems and mechanisms required in these regulations, were properly followed and monitored; and

(4) Immediate action was taken to remedy the problem causing the questioned activity or ineligibility; and

(5) The magnitude of questioned costs or activities is not substantial.

has argued that an equitable waiver is appropriate, I will consider the appropriateness of exercising my discretionary authority to grant a waiver in this case under Section 106(d) of **the** Act and its implementing regulation at Section 676.88(c). **See Maine v. United States Department of Labor**, 669 **F.2d** 827, 832 (1st Cir. 1982); **see also Chicano v. United States Department of Labor**, 909 **F.2d** 1320, 1327-1329 (9th Cir. 1990) (Secretary must apply Section 676.88(c) to determine whether special circumstances exist under Section 106(d)(2) before ordering repayment): **Action, Inc. v. Donovan**, 789 **F.2d** 1453, 1459-1460 (10th Cir. 1986) (remand to Secretary to consider "substantial argument" for exercise of discretion to waive repayment of costs under Section 676.88(c)); **Onslow County v. United States Department of Labor**, 774 **F.2d** 607, 613-614 (4th Cir. 1985) (remand to Secretary for consideration of equitable factors advanced by recipient as basis for waiver of repayment): **Quechan Indian Tribe v. Department of Labor**, 723 **F.2d** 733, 736-737 (9th Cir. 1984) (remand to Secretary for consideration of equities under Section 676.88(c) in making an explicit determination that sanction of repayment is warranted).

In considering the issue of equitable waiver in the present case, the **ALJ** did not address the specific language of Section 676.88(c), and failed to observe that the waiver provision of this regulation applies only to misspent funds associated with public service employment programs and ineligible participants. **See Central Tribes of the Shawnee Area, Inc.**, Case No. **85-CPA-17**,

Sec. Final Decision and Order, December 14, 1989, slip op. at 3-5; California Indian Manpower Consortium, Case No. 85-CTA-124, Sec. Final Decision and Order, October 25, 1988, slip op. at 6. None of the disallowed costs at issue in this case is related to "public service employment programs" as required under 29 U.S.C. § 816(d)(2) and its implementing **regulatory** provision. Accordingly, the ALJ erred in concluding that a waiver of repayment of misspent funds was appropriate in this case. I, therefore, reverse the **ALJ's** findings that RSETC should be excused from repayment of the following properly disallowed costs: \$1,048 in rent, supplies and equipment; \$875 in consulting fees; \$1,780 in consulting fees; \$7,035 in recreation and transportation costs; and \$1,148 for clambake costs. RSETC is liable for repayment of these misspent funds in violation of CETA regulations, from non-CETA sources. 29 U.S.C. § 816(d) (I).

Further factual determinations are required, however, with respect to the exact amount of the misspent funds which need to be repaid in the two categories associated with inadequate documentation of eligibility of participants in the Rockingham and Strafford Counties' summer youth employment programs (SPEDY programs) in 1974. A total of \$15,350 was disallowed for the Rockingham County SPEDY program, and \$19,047 was disallowed for the Strafford County SPEDY program. After reviewing the evidence of record proffered by RSETC in support of participant eligibility in the summer youth employment programs, as well as

the Grant Officer's Final Determination of June 1981, and Revised **Final** Determination of **July** 1981, the **ALJ** concluded that RSETC had demonstrated a much smaller number of ineligible participants **and** incomplete applications than the Grant Officer found. **See** GX-9; GX-10; GX-12. ^{3/} In reaching this conclusion, the ALJ also considered that the Grant Officer failed to respond specifically to **RSETC's** evidence in support of greater compliance than determined by the Grant Officer. **See ALJ's** D.O. at 15-16. Inasmuch as the Grant Officer has not taken exception to these findings and they are supported by the record, I accept the **ALJ's** conclusions as to the sufficiency of the additional evidence proffered by RSETC to establish greater compliance than found by the Grant Officer. Because the **ALJ** waived repayment of **all** the disallowed costs, he did not make the requisite factual finding as to precise amount of the reduced disallowed costs involving eligibility which had been established by RSETC. Consequently, although I find that repayment of the disallowed costs associated with participant eligibility in the 1974 SPEDY programs is required, I remand the case for a precise determination by the **ALJ** of the appropriate amount of these disallowed costs.

For the reasons discussed herein, RSETC is ordered to repay \$11,886, from non-CETA sources, and repayment of the remaining

^{3/} The grant officer's exhibits entered into the record at the hearing are referred to herein as "GX."

disallowed amounts for ineligible participants is also ordered in the amount to be determined **by** the **ALJ** on remand.

Accordingly, the Decision and Order of the **ALJ** is affirmed in part and reversed in part and remanded for further consideration consistent with this opinion.

SO ORDERED.


Secretary of Labor

Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: In the Matter of Rockingham/Strafford Employment
and Trainina Consortium

Case No. : 81-CTA-363

Document : Decision and Order of Remand

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