

U. S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: July 1, 1993
CASE NO. 83-CTA-252

IN THE MATTER OF

u. s. DEPARTMENT OF LABOR,

v.

THE ALASKA NATIVE FOUNDATION, INC.

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) and the implementing regulations at 20 C.F.R. Parts 675-680 (1990) and 29 C.F.R. Part 97 (1984).^{1/}

On May 6, 1986, The Alaska Native Foundation, Inc. (ANF) appealed the April 23, 1986, order of the Administrative Law Judge (ALJ) granting the Grant Officer's motion to dismiss ANF's request to set aside a previous ALJ's order which affirmed the Grant Officer's disallowance of \$94,067 of CETA expenditures claimed by ANF. The Secretary asserted jurisdiction on May 23, 1986.

^{1/} CETA was repealed effective October 13, 1982, and was replaced by the Job Training Partnership Act, 29 U.S.C. §§ 1501-1791 (1988).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).

The last year that the CETA regulations were printed in the Code of Federal Regulations was 1990.

BACKGROUND

The Grant Officer issued a Final Determination on May 26, 1983, disallowing \$94,067 of expenditures claimed by ANF under its CETA grant. Administrative File 8-9. The disallowed costs were excess administrative costs claimed in contravention of the pertinent CETA regulations. 29 C.F.R. § 97.161(f)(6).

On June 1, 1983, ANF requested a hearing before the Office of Administrative Law Judges (OALJ), but failed to appear at the scheduled hearing. In August 1984, ANF received the ALJ's Order to Show Cause as to why the disallowed costs should be treated as allowable costs. ANF's then attorney requested and received an extension to respond to the order, but nevertheless did not respond. In September 1984, ANF allegedly packed away its copy of the Order to Show Cause when it moved its offices approximately three city streets in Anchorage, but neglected to notify either the OALJ or the Grant Officer of its change of address. ANF claims that it had no contact with its attorney for the next year. ANF alleges that it received no other correspondence regarding this case until it received the Grant Officer's demand letter dated July 22, 1985.^{2/} The record contains the Grant Officer's Certificates of Service of mailings to ANF in December 1984, (Grant Officer's motion for an order affirming final determination and disallowance), and in January 1985, (ALJ's order granting that motion). ANF did not except to

^{2/} The demand letter was sent to ANF's new address, but a subsequent letter in July 1985, from the Department's Regional Solicitor bearing ANF's old address was also received by ANF.

the ALJ's order affirming the disallowance which became the final action of the Secretary. 20 C.F.R. § 676,91(f).

On August 6, 1985, ANF's present counsel appealed the Grant Officer's demand letter to the OALJ. The Grant Officer moved to dismiss ANF's appeal of the demand letter and ANF then moved to set aside the default judgment. The ALJ granted the Grant Officer's motion to dismiss ANF's request to reopen the case, and affirmed the default judgment.

DISCUSSION

The issues before me concern: (1) the OALJ's authority to review the previous ALJ's decision affirming the Grant Officer's disallowance after it became the final action of the Secretary; and (2) whether the ALJ abused his discretion in granting the Grant Officer's motion to dismiss ANF's motion to set aside the default judgment. The regulation at 20 C.F.R. § 676.89(a) provides that procedural questions not regulated by subpart F of Part 676, CETA or the Administrative Procedure Act, shall be guided to the extent practicable by the Federal Rules of Civil Procedure (Fed. R. Civ. P.). The Secretary determined that Fed. R. Civ. P. 60(b), which permits a court, at its discretion, to relieve a party from a final judgment or order for, inter alia, excusable neglect, ^{3/} was applicable to cases before the OALJ.

^{3/} Fed. R. Civ. P. 60 entitled "[r]elief [f]rom Judgment or Order" provides in pertinent part:

(b) Mistakes: Inadvertence: Excusable Neglect: Newly Discovered Evidence: Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final

(continued...)

In the Matter of Metlakatla Indian Community, Case No. 81-CTA-268, Sec. Order Reinstating Decision, Apr. 30, 1984, slip op. at 3. Therefore the OALJ had the authority to review prior ALJ decisions.

The ALJ did not abuse his authority denying ANF's request to reopen the case and granting the Grant Officer's motion to dismiss ANF's request and affirming the default judgment. The courts have established criteria applicable to setting aside default judgments pursuant to Rule 60(b). These criteria require more than merely "good cause shown?" Jackson v. Beech, 636 F.2d 831, 835-36 (D.C. Cir. 1980). "Excusable neglect" which would be the basis for consideration under Rule 60(b) in this case, has been characterized as those occasions when the petitioner was unable to act on his own behalf, or when the petitioner was diligent in his concern, but unforeseeable circumstances beyond the petitioner's control intervened to his detriment. Klapprott v. United States, 335 U.S. 601 (1949) (petitioner was incarcerated and weak from illness); United States v. Cirami, 563 F.2d 26, 34 (2d Cir. 1977) (petitioner's counsel was suffering from a mental disorder which induced him to both neglect his duties and assure his client that he was attending to them). The failure of counsel does not automatically provide an excuse for

^{3/}(. ..continued)

judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; ... or (6) any other reason justifying relief from the operation of the judgment.

(1991)

the party seeking relief on a default. Link v. Wabash Railroad Company, 370 U.S. 626 (1962).

ANF's admission of its receipt of the ALJ's Order to Show Cause and then packing it away prior to moving its offices, its claim not to have been in contact with its prior attorney for almost a year after its receipt of the pending order to show cause, and its failure to notify either the OALJ or the Grant Officer of its move, are not consistent with a claim of uncontrollable occurrences or due diligence.^{4/} The ALJ determined that ANF's neglect was not excusable, and I am persuaded that the ALJ was justified in denying ANF's request to reopen the case. Standard Newspaper, Inc v. King, 375 F.2d 115 (2d Cir. 1967) (misplacing papers during an office move not adequate reason to set aside previous default judgment); Thompson v. Housing Authority of City of Los Angeles, 782 F.2d a219 (9th Cir. 1986) (affirming dismissal by district court on a record of inexcusable delay and neglect by plaintiff's counsel); Pena v. Seauros La Commercial, S.A., 770 F.2d 811 (9th Cir. 1985) (failure to provide correct address to parties for forwarding documents does not constitute excusable neglect).

ORDER

The ALJ's order issued April 23, 1986, granting the Grant Officer's motion to dismiss IS AFFIRMED. The Alaska Native Foundation, Inc. IS ORDERED to repay \$94,067 to the U.S. Department of Labor. This payment shall be from non-Federal

^{4/} ANF's Response Brief before the OALJ at 7-8.

funds. Milwaukee County, Wisconsin v. Donovan, 771 F.2d 983, 993
(7th Cir. 1985), cert. denied, 476 U.S. 1140 (1986).

SO ORDERED.



Secretary of Labor

Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: United States Department of Labor v. The Alaska Native Foundation, Inc.

Case No. : 83-CTA-252

Document : Secretary's Final Decision and Order

A copy of the above-referenced document was sent to the following persons on JUL I 1993.



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