

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: September 29, 1993
CASE NOS. 83-CTA-15
85-CPA-15

IN THE MATTER OF

CALIFORNIA INDIAN MANPOWER
CONSORTIUM, INCORPORATED,

PLAINTIFF,

V.

UNITED STATES 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) and the regulations at 20 C.F.R. Parts 675-689 (1990). ^{1/} The case results from the Grant Officer's determination that the California Indian Manpower Consortium, Incorporated (CIMC), the administrative agency of the California Indian Manpower Consortium, the CETA grantee, was liable for the repayment of disallowed costs fraudulently charged to its CETA grants. ^{2/}

^{1/} CETA was repealed by the Job Training Partnership Act, 29 U.S.C. §§ 1501-1791 (1988), on October 13, 1982, but CETA administrative and judicial proceedings pending on that date were not affected. 29 U.S.C. § 1591(e).

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

^{2/} The relationship between the consortium and CIMC is set out in the Hearing Transcript (T.) at 20-24.

The two cases arose from subsequent audits of the same CETA grants, and were consolidated prior to the hearing. T. at 4-6, 11-12.

The Administrative Law Judge's (ALJ) Decision and Order (D. and O.) affirmed the Grant Officer's disallowance of costs and holding CIMC responsible for the repayment of \$28,548. This amount is the balance of disallowed costs after a partial restitution by CIMC's subgrantee. D. and O. at 1, n. 2. The ALJ also determined that only the Secretary had the discretionary authority to allow disallowed costs pursuant to 29 U.S.C. § 816(d) (2). D. and O. at 14. The Grant Officer excepted to the ALJ's interpretation of Section 816(d)(2), and CIMC excepted to the ALJ's finding that it was liable for repayment of the disallowed costs.

BACKGROUND

CIMC entered into worksite agreements with the Pala Band of Mission Indians (Pala Band) to place eligible Public Service Employment (PSE) and Work Experience participants in the Pala Band's Alfalfa Project. The terms of the agreements and CETA regulations required PSE and Work Experience participants work in only non-profit activities. The participants were specifically prohibited from working for private, for-profit organizations. During the period from June 13, 1977 to September 30, 1979, three participants were diverted from working on the Alfalfa Project to work on lands belonging to a private, commercial agricultural nursery located on the Pala reservation owned by Lawrence

Blacktooth, who at that time was the Chairman of the Board of CIMC, as well as the Chairman of the Pala Band.

In mid-September 1979, CIMC learned of the illegal diversion, and immediately took action to remove the participants from Blacktooth's nursery and to place them on the eligible worksite. CIMC notified the Department of Labor of its finding and its actions. Blacktooth was indicted after investigations by the Department's Office of the Inspector General (OIG) and the Federal Bureau of Investigation. Blacktooth subsequently pleaded guilty to a misdemeanor, and as part of the plea agreement, signed a stipulation of judgment. The Government collected \$5,325 against that judgment, which the Grant Officer applied to the total amount disallowed against CIMC.

DISCUSSION

CIMC contends that the Department is precluded from recouping the disallowed costs from it under the doctrines of res judicata and collateral estoppel because of the Government's criminal and civil proceedings against Blacktooth. CIMC contends that the Government's recoupment effort is restricted to only such funds which it accepted as restitution from Blacktooth. CIMC argues that the Government is equitably estopped from proceeding against it since CIMC staff relied on statements made by OIG staff to its detriment, not to proceed against Blacktooth once the Government commenced criminal proceedings against him. Finally, CIMC urges the Secretary to allow the disallowed costs pursuant to his authority under CETA Section 816(d)(2) and the

regulations at 20 C.F.R. § 676.88(c).

CIMC's misapprehends the doctrines of res judicata and collateral estoppel and their application to this case. The doctrine of res judicata bars subsequent suits between the same parties on the same cause of action after a final judgment on the merits. United States v. Mendoza, 464 U.S. 154, 158 (1984); Montana v. United States, 440 U.S. 147, 153 (1979). It does not bar a party from pursuing a claim against a third party merely because the second claim arose from the same factual circumstances. CIMC erroneously attempts to equate the Government's criminal and civil proceedings against Blacktooth to the Department's effort to recover misspent funds from it as a CETA grantee. Neither the parties nor the causes of action in either case are the same, therefore a defense of res judicata is not applicable.

The criminal proceeding and consequent civil recovery action against Blacktooth pertain to his fraudulent actions converting the work of the three CETA participants from the Pala Alfalfa Project to his personal benefit. At no time was CIMC implicated in any way with Blacktooth's fraudulent activities. The present case is an action to recover misspent grant funds from CIMC as a CETA grantee.

CIMC's defense of collateral estoppel likewise fails, for the issues in the cases are markedly different. The issue in the proceedings against Blacktooth was his fraudulent actions, in this case it was CIMC's responsibility to repay misspent CETA

funds which it expended as a result of Blacktooth's fraudulent activities. The CETA statute, at Section 106(k), 29 U.S.C. § 816(k), and the case law favoring such recovery is well established. Brock v. Pierce County, 476 U.S. 253, 265 (1986); Chicano Education and Manpower Services v. U.S. Dep't of Labor, 909 F.2d 1320, 1328 (9th Cir. 1990); Binninham Area Manpower Consortium v. U.S. Dep't of Labor and Carpenters District Council, JATC v. U.S. Dep't of Labor, Case Nos.

88-CPA-1, 87-CTA-16, Sec Dec., Oct. 26, 1992, slip op. at 5-6.

CIMC's contention that the Government is equitably estopped from recouping the misspent funds from it because it relied on statements by OIG staff when it stopped its recovery actions against Blacktooth is not persuasive. More than a year elapsed between the time CIMC knew of Blacktooth's misappropriation of CETA grant funds until the commencement of the criminal proceedings. CIMC failed to adequately protect its interest by seeking restitution from Blacktooth during the intervening time then, and can not now shift the responsibility for its inaction to the Department. D. and O. at 13.

Nor is it appropriate to waive recoupment of the misspent costs pursuant to Section 816(d)(2). Although the ALJ perceived that only the Secretary had the authority to consider allowing the misspent costs pursuant to § 816(d)(2), D. and O. at 14, she nevertheless considered her recommendations to the Secretary within the context of the implementing regulations. Chicano Education, 909 F.2d at 1327 (Secretary promulgated 20 C.F.R.

§ 676.88(c) to implement the "special circumstances" language of Section 106(d)(2)); see Blackfeet Tribe v. U.S. Dep't of Labor, Case No. 85-CPA-45, Sec. Dec., Dec. 2, 1991, slip op. at 5-6.

The ALJ found the testimony of CIMC's witnesses regarding the inherent difficulties in monitoring projects on the Pala reservation unpersuasive. She recommended that the Secretary affirm the Grant Officer's determination that CIMC had an inadequate monitoring system and did not satisfy the third requirement of § 676.88(c). ^{3/} D. and O. at 8-10.

The ALJ also found that the underlying fraud which gave rise to the disallowance does not comply with the first requirement of

^{3/} 20 C.F.R. § 676.88(c) entitled [i]nitial and final determinations; request for hearing at the Federal level" provides:

(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 the 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 the subrecipient;

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

(emphasis added).

It is noted that not all of the disallowed funds were associated with PSE participants. T. at 12-13. That sum associated with the wrongfully employed Work Experience participant would not be eligible for waiver under the regulation.

§ 676.88(c), see n. 3 above, even though the Grant Officer did not give that as a reason when he declined to waive repayment under the regulation. D. and O. at 8. I agree that the facts in this case do not support allowing the misspent costs pursuant to the regulations at 20 C.F.R § 676.88(c).

The ALJ erred in concluding that only the Secretary has the authority to waive recoupment under CETA § 816(d)(2). Although Section 106(d)(2) authorizes the Secretary to waive repayment of misspent funds provided the questioned costs pertain to PSE programs, ^{4/} the regulation at 20 C.F.R. § 676.91(c) explicitly provides: "[t]he Administrative Law Judge shall have the full authority of the Secretary in ordering relief," The regulation at 20 C.F.R. § 676.88(c), delegates the authority to allow misspent costs to the Grant Officer, which further lends weight to the interpretation that the statute's discretionary authority does not belong exclusively to the Secretary. I reverse the ALJ's interpretation that discretionary authority to allow these misspent costs vests solely with the Secretary,

^{4/} CETA Section 106(d)(2) provides:

If the Secretary concludes that a public service employment program is being conducted in violation of [enumerated sections of the Act], or regulations promulgated pursuant to such sections, the Secretary shall, pursuant to paragraph (1) of this subsection, ... order the repayment of misspent funds ... (unless, in view of special circumstances as demonstrated by the recipient, the Secretary determines that requiring repayment would not serve the purpose of attaining compliance with such sections),

29 U.S.C. § 816 (d)(2) (emphasis added).

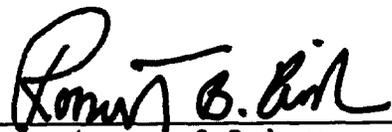
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however, such error does not adversely affect the rights of the parties.

ORDER

The ALJ's decision ordering the California Indian Manpower Consortium, Incorporated, to repay to the Department of Labor disallowed costs in the sum of \$28,548 IS AFFIRMED. This payment shall be from non-Federal 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: In the Matter of California Indian Manpower Consortium, Incorporated v. U.S. Department of Labor,

Case No. : 83-CTA-15, 85-CPA-15

Document : Final Decision and Order

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