



In the Matter of:

JAMES GAMBLE,

CASE NO. 94-CET-1

CHARGING PARTY,

DATE: June 28, 1996

v.

THE WISCONSIN COUNTIES OF RACINE,
WALWORTH AND KENOSHA,

and

THE SOUTHEASTERN WISCONSIN PRIVATE
INDUSTRY COUNCIL (SEWPIC),

and

GOVERNOR TOMMY THOMPSON,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

ORDER DENYING ASSERTION OF JURISDICTION

This case arises under the Comprehensive Employment and Training Act (CETA), 29 U.S.C. § 801-999 (Supp. V 1981), the regulations thereunder at 20 C.F.R Parts 675-680 (1990)^{2/} and Section 181(e), of the Job Training Partnership Act of 1982 (JTPA), as amended, 29 U.S.C. §§ 1501,

^{1/} On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under these statutes and regulations to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996)(copy attached).

Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order and regulations under which the Board now issues final agency decisions. A copy of the final procedural revisions to the regulations (61 Fed. Reg. 19982), implementing this reorganization is also attached.

^{2/} 1990 was the last year that CETA regulations were published in the Code of Federal Regulations.

1591(e)(1988) and the regulations thereunder at 20 C.F.R. Part 34 (1995). The Board declines to assert jurisdiction in this case for the reasons set forth below.

BACKGROUND

On March 12, 1996, counsel for the Charging Party (Plaintiff) moved for an extension of time in which to file exceptions to the Administrative Law Judge's (ALJ) Decision and Order issued on January 26, 1996. This date was 41 days after counsel's receipt of the decision. Plaintiff's Motion for Extension of Time at 3.

On March 13, 1996, a Conditional Order was issued allowing Plaintiff additional time to file exceptions to the ALJ's decision. The Order also requested both parties to address the issue as to the applicability of the pertinent CETA or JTPA provisions concerning the time for filing exceptions. The parties submitted briefs in support of their positions on the timeliness issue. Plaintiff also set out his substantive exceptions to the ALJ's decision.

On April 19, 1996, an Order was issued granting the Respondents' motion requesting an extension of time to respond to Plaintiff's substantive exceptions until a decision concerning the timeliness of said exceptions was issued.

DISCUSSION

On May 9, 1984, the Department of Labor published a final rule in the Federal Register revising the CETA regulation at 20 C.F.R. § 676.91(f) to clarify the appeals procedure in the then expired CETA program. The regulation was revised "to establish a time limit for the acceptance of an appeal from an . . . ALJ[']s decision." The revised regulation also clarified the administrative appeals procedure "wherein a party dissatisfied with an ALJ decision has 30 calendar days from receipt of the decision to file exceptions with the Secretary. . . . If timely exceptions are not filed . . . the ALJ decision automatically becomes the final decision of the Secretary." 49 Fed. Reg. 19639-40.

On April 6, 1990, the Department published notice of the removal of the CETA regulations from the Code of Federal Regulations, and reiterated that CETA regulations continued to apply to litigation arising under CETA. 55 Fed. Reg. 12995. The Secretary's Order creating the Administrative Review Board specifically states that we "shall observe the provisions [of the Code of Federal Regulations] where pertinent, in . . . [our] decisions." 61 Fed. Reg. 19979, May 3, 1996.

Section 181(e) of the JTPA, 29 U.S.C. § 1591(e), specifically preserves causes of action filed under CETA. Therefore, Plaintiff's cause of action against Respondents was preserved, but so were the CETA procedural regulations that applied to that cause of action.

Plaintiff fails to address the Department's explicit direction, published eight years after the program's repeal, that the CETA regulations were to continue to apply to litigation arising under

CETA. 55 Fed. Reg. 12995. Thus, Plaintiff's contention that the repeal of CETA and its regulations militates in favor of compliance with the JTPA procedural rules is not persuasive.

Even if the applicable regulations were not so specific in the requirement to apply CETA regulations to CETA cases, we still would not assert jurisdiction in this case. Although the general rule of law provides that current procedural rules are to be followed as opposed to those prevailing on the date of the alleged violation, this rule is excepted if there would be a manifest injustice or if there is statutory direction or legislative history to the contrary. *See Bradley v. Richmond School Board*, 416 U.S. 696, 711 (1976); *cf. Kentucky v. Brock*, 845 F.2d 117, 120 (1988)(strict adherence to the time requirements regarding judicial review of CETA cases, when the time limits are in both the Act and the regulations). We credit the Department's reiteration of the CETA regulations' application to litigation arising under the program as similar to statutory direction. We further hold that the extraordinary administrative delay of 17 years in bringing this matter to conclusion presents a manifest injustice to the Respondents' ability to defend against claims regarding their liability in this case.

Therefore, Plaintiff's failure to timely except to the ALJ's decision is jurisdictional, and the request to the Board to review this case IS DENIED.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member