



UNITED STATES DEPARTMENT OF EDUCATION
THE SECRETARY

In the Matter of
ELECTRONIC COLLEGE AND
COMPUTER PROGRAMMING,
Respondent

Docket No. 91-7-ST
Student Financial
Assistance Proceeding

DECISION OF THE SECRETARY ON REMAND

This matter was returned to me on appeal by the Office of Student Financial Assistance (OSFA) from a decision on remand of Administrative Law Judge Daniel R. Shell (ALJ), dated July 21, 1992. This case had been remanded to the ALJ to render a factual finding concerning the potential misuse of Pell Grant funds by Electronic College and Computer Programming (ECCP), and for consideration of an appropriate sanction if misuse was found.

The ALJ's decision on remand indicates that the ALJ misunderstood two important aspects of the Decision of the Secretary. The first misunderstanding involves the substance of the agreement between the parties; the second involves the Secretary's direction to the ALJ on remand.

THE AGREEMENT:

The Decision of the Secretary held there was no substantial evidence to support a finding that OSFA had agreed with ECCP to resolve all outstanding issues. The evidence cited by the ALJ in his April 10, 1992, decision only supported a finding that the parties had agreed to bargain in good faith to resolve outstanding issues. In his decision on remand, the ALJ continues to argue that the agreements between the parties were to "resolve all issues."¹ This issue was resolved by the Decision of the Secretary and is not subject to further debate.

¹ ALJ Decision on Remand, page 3.

THE DIRECTION ON REMAND:

The Decision of the Secretary directed the ALJ, among other things, to render "a finding on ECCP's misappropriation of Pell Grant funds."² In his decision on remand, the ALJ states:

The language of the remand order directs a finding that ECCP misappropriated Pell Grant funds. Therefore, based upon the findings and direction of the Secretary, it₃ is concluded that ECCP misappropriated Pell Grant funds.

Contrary to the ALJ's interpretation of the remand order, the Secretary intended that the ALJ make a reasoned decision based upon the evidence of record as to whether ECCP had misused Pell Grant funds. It was not the intention of the Secretary for the ALJ to make a conclusory statement.

THE ALJ'S CONSIDERATION OF A FINE:

In addition to the two misunderstandings highlighted above, the ALJ also failed to adequately express his rationale relating to the propriety of imposing a fine on ECCP as an additional administrative sanction. In his decision on remand, the ALJ states:

Next, the Secretary remands for consideration the propriety of imposing a fine on ECCP as an additional administrative sanction for the rendering of an affirmative finding of ECCP's misappropriation of Pell Grant funds and the previous finding in the initial decision against ECCP for untimely filed audits.

ORDER: After careful consideration of all of the facts, evidence, and mitigating circumstances presented in the record, it is found that₄ the ORDER at page 54 of the INITIAL DECISION is appropriate.

The ALJ has clearly failed to express a reasoned analysis in support of his conclusions. The ALJ must express the factors he considered to guard against potentially arbitrary and capricious decisions.

2 Decision of the Secretary, page 8.

3 ALJ Decision on Remand, page 4.

4 ALJ Decision on Remand, page 4.

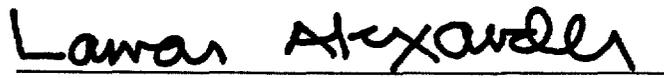
HOLDING

In light of the above shortcomings in the ALJ's decision on remand, the Secretary must again remand these proceedings for the following action --

1. Consideration of the propriety of imposing a fine on ECCP as an additional administrative sanction based upon the ALJ's findings in his Initial Decision;
2. The rendering of a finding on whether ECCP misused Pell Grant funds; and
3. Consideration of the appropriateness of a termination and/or fine in light of the ALJ's finding on any misuse of Pell Grant funds and the ALJ's previous finding of untimely filed audits.

The ALJ is further directed to articulate a reasoned, detailed analysis in support of his conclusions; identifying all factors he considered and the relative weight he has attached to each factor.

So ordered this 19th day of January, 1993.


Lamar Alexander

Washington, DC

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