



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of
Little French
Beauty Academy

Docket No. 91-62-ST

Disqualification

Decision of the Secretary

This matter comes before the Secretary on appeal by the Office of Student Financial Assistance Programs (OSFA) of the Initial Decision issued in this cause by Chief Administrative Law Judge John F. Cook (ALJ) on December 22, 1992. This case is a disqualification proceeding to determine whether Little French Beauty Academy (Little French) is to be disqualified nationwide from further participation in the Stafford Loan Program, the Supplemental Loans to Students Program, and the PLUS Program. This action is based upon the July 23, 1991, action by the Higher Education Assistance Foundation (HEAF) to terminate the eligibility of Little French to participate in the loan guarantee programs administered by HEAF.

In his deliberations, the ALJ properly considered the following three issues:

- a. Did HEAF take action on the basis of substantive agency requirements regarding eligibility that were not more onerous than those in effect for schools participating in the Federal Insured Student Loan Program (FISLP) as of January 1, 1985?
- b. Did HEAF take that action in accordance with procedures that were substantially the same as those that govern the limitation, suspension, or termination of a school's eligibility under the FISLP?
- c. Are the factual findings of HEAF insupportable as a matter of law?

In the Initial Decision the ALJ found that the procedures used by HEAF were substantially the same as those under FISLP and that HEAF's factual findings are not insupportable as a matter of law. However, the ALJ did find that the primary basis for HEAF's decision to terminate Little French, the refund calculation under 34 C.F.R. §682.606, was more "onerous" than the substantive

requirements in effect under FISLP on January 1, 1985. Therefore, the ALJ held that Little French should not be disqualified.

On appeal, OSFA presents two issues for consideration by the Secretary:

- a. The ALJ improperly substituted his judgement for HEAF's in deciding that, without the refund calculation error, disqualification was not warranted.
- b. HEAF's requirements in this case were not more onerous than FISLP requirements in effect on January 1, 1985.

Little French has responded in support of the conclusions and findings of the Initial Decision.

Primary vs. De Minimis

The first issue presented by OSFA is based on the fact that HEAF based its termination of Little French on 17 findings. OSFA argues that even if the refund calculation requirement was more onerous than the substantive requirements of FISLP on January 1, 1985, the remaining 16 findings cited by HEAF were sufficient to justify nationwide disqualification. Little French responds that ALJ found the refund finding to be the primary reason underlying the termination decision, and without such a finding Little French may not have been terminated. Therefore, HEAF's termination action may not serve as the basis for nationwide disqualification.

It is clear from the Initial Decision that the ALJ thoroughly considered this issue:

The question next arises as to whether this issue as to the refund calculation was merely de minimis or whether it is of such import that it substantially affects the foundation upon which HEAF took its action and that consequently HEAF's termination action, minus this issue, is inadequate to serve as the foundation for Education to disqualify LFBA [Little French] nationwide from further participation in the Stafford Loan Program, the Supplemental Loans to Students Program, or the PLUS Program.

The record indicates that the issue relating to refund's was the primary basis for HEAF's termination action ...

The fact that the refund issue was the primary basis for HEAF's termination action is shown in several different documents in evidence ...

... the only violation discussed by HEAF in that notice related to the refunds. One sentence was devoted to all remaining 16 violations. That sentence did not even describe any of them.

Also OSFA placed the same primary emphasis upon the refund issue ...

... although the refund issue is discussed, not one of the other 16 issues is actually described by counsel.

It is therefore clear from HEAF's official notice to termination of eligibility, the statement of HEAF's vice-president and general counsel, OSFA's official notice as the review of the HEAF termination action, and arguments of OSFA's counsel that the primary basis for HEAF's termination action was the refund issue ...¹

The ALJ's finding that the refund issue was the primary basis for HEAF's termination action is supported by substantial evidence and will not be disturbed by the Secretary on appeal.

Onerous

The second issue presented is whether the ALJ erred in holding that HEAF's requirements in this case were not more onerous than FISLP requirements in effect on January 1, 1985. OSFA argues that the refund calculation requirements of 34 C.F.R. § 682.606 (1990) are an evolutionary modification of the refund requirements of 34 C.F.R. § 682.608 (1985); and, are not "more onerous" within the context of 20 U.S.C. 1078 (b) (1) (T). OSFA's argues that the modification is only different, not more onerous. Little French responds that it is implicit in the Initial Decision that the ALJ understood the difference between "different" and "onerous;" and, that the ALJ's decision was based upon a finding that the HEAF's refund finding was a result of new and more demanding requirements.

In the Initial Decision, the ALJ found that the refund calculation requirements used by HEAF were "new and additional," and "clearly are more demanding refund procedures than existed previously."²

When enacting 20 U.S.C. 1078 (b) (1) (T) Congress chose the word "onerous" to describe changes in eligibility requirements that would make the disqualification proceeding unavailable.

¹ Initial Decision, pages 16 to 18.

² Initial Decision, Page 14 and 15.

"Onerous" is a strong adjective, implying unreasonable and burdensome.³ Synonyms for onerous include; ponderous, laborious, difficult, and oppressive.⁴ Therefore, an obligation that is new, different, or even more demanding or complex, does not necessarily rise to the level of being more "onerous." The Secretary holds that the ALJ applied the wrong standard in determining whether the refund calculation requirement used by HEAF was "more onerous" than the refund requirement in effect under FISLP on January 1, 1985.

In comparing 34 C.F.R. § 682.606 (1990) and 34 C.F.R. § 682.608 (1985), the Secretary agrees with the ALJ's characterization that the pro rata refund calculation is new, additional, and even more demanding. However, the refund calculation does not appear unreasonable, overly burdensome, or oppressive. Therefore, the Secretary concludes that the modified refund requirement is not more onerous than the requirements under FISLP in effect on January 1, 1985.

Holding

HEAF's termination of Little French was not based upon substantive requirements that were more onerous than those in effect for schools participating in the FISLP as of January 1, 1985. Combined with the conclusions and findings of the Initial Decision, this conclusion requires that Little French be disqualified from participating in guaranteed student loan programs nationwide.

So ordered this 25th day of March, 1993.


Richard W. Riley

Washington, DC

³ See generally: Black's Law Dictionary, (5th Ed. 1979), and Webster's New World Dictionary, (3rd College Ed. 1988).

⁴ Rodet's International Thesaurus (3rd Ed. 1962).