



INTERIOR BOARD OF INDIAN APPEALS

Kathleen Face v. Acting Assistant Secretary - Indian Affairs

11 IBIA 35 (01/04/1983)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

KATHLEEN FACE : Order Docketing and Dismissing  
: Appeal  
v. :  
: Docket No. IBIA 83-9-A  
ACTING ASSISTANT SECRETARY-- :  
INDIAN AFFAIRS : January 4, 1983

On December 13, 1982, the Board of Indian Appeals received a notice of appeal, mailed on December 9, 1982, from Kathleen Face (appellant), through Yvette Hall War Bonnet, Esq., Dakota Plains Legal Services, Mission, South Dakota, seeking review of a September 23, 1982 decision of the Acting Assistant Secretary--Indian Affairs. That decision held that appellant's adult vocational training funds would not be continued.

Appellant and her counsel apparently both believed that the notice of appeal had to be filed within 45 days from receipt of the decision being appealed. Appellant signed the notice on November 12, 1982, the 45th day, and mailed it to counsel, rather than to the Board. Counsel forwarded the notice to the Board, asking that the untimely filing be excused.

The Board's prior regulations in 43 CFR 4.354(a) (1980) did provide that notices of appeal from administrative decisions of officials of the Bureau of Indian Affairs were to be filed within 45 days from service of the decision. These regulations were amended (46 FR 7337 (Jan. 23, 1981)) and the present regulation provides for a 60-day appeal period. 43 CFR 4.332(a). <sup>1/</sup> Appellant's notice of appeal is untimely even under the present 60-day rule.

Under 43 CFR 4.334, the time for filing any document may be extended for good cause shown, "except for the time fixed for filing a notice of appeal, as specified in § 4.332, which may not be extended." The Board has held that the timely filing of a notice of appeal is jurisdictional. Donald Victor Beck v. Bureau of Indian Affairs, 8 IBIA 210 (1980), on reconsideration, 8 IBIA 211 (1980).

Therefore, this appeal must be dismissed because it was not timely filed.

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<sup>1/</sup> This change was made to coincide with procedural regulations of the Bureau of Indian Affairs. See 25 CFR 2.19(c).

Even if the notice had been timely, the Board would still be without jurisdiction to consider the appeal. Under 43 CFR 4.330(b)(2), the Board shall not adjudicate "matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority." The Acting Assistant Secretary correctly characterized this decision as discretionary. Wesley Wishkeno v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 21, 89 I.D. 655 (1982).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals, 43 CFR 4.1(b), this appeal is dismissed. This decision is final for the Department.

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Wm. Philip Horton  
Chief Administrative Judge

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//original signed  
Franklin D. Arness  
Administrative Judge

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//original signed  
Jerry Muskrat  
Administrative Judge