



INTERIOR BOARD OF INDIAN APPEALS

Clyde R. Arcoren, Sr. v. Deputy Assistant Secretary - Indian Affairs (Operations)

13 IBIA 307 (10/29/1985)



United States Department of the Interior

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

CLYDE R. ARCOREN, SR.

v.

DEPUTY ASSISTANT SECRETARY--INDIAN AFFAIRS (OPERATIONS)

IBIA 85-10-A

Decided October 29, 1985

Appeal from a July 6, 1984, decision issued by the Deputy Assistant Secretary--Indian Affairs (Operations) denying an application for Sioux benefits.

Affirmed as modified.

1. Bureau of Indian Affairs: Generally--Indians: Generally

The Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. § 525 (1982), applies to actions taken by the Bureau of Indian Affairs.

APPEARANCES: Manuel Montelongo, Esq., Scottsbluff, Nebraska, for appellant. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On July 6, 1984, the Deputy Assistant Secretary--Indian Affairs (Operations) (appellee) issued a decision finding that Clyde R. Arcoren, Sr. (appellant), was not eligible to receive Sioux benefits under 25 U.S.C. § 474 (1982), ^{1/} and 25 CFR Part 125.5(d)(2). Appellant filed a timely notice of appeal with appellee. On December 10, 1984, the appeal and administrative record were transmitted to the Board of Indian Appeals (Board) in accordance with the terms of the July 6 decision letter and 25 CFR Part 2. For the reasons discussed below, the Board affirms appellee's decision as modified by this opinion.

Appellant, who was born on January 10, 1924, is an unallotted Sioux of the Rosebud Reservation. He has lived off the reservation since he was approximately 17 years old, when he moved to the State of Wyoming. In 1943 he was inducted into the United States Navy and served in the South Pacific until 1946. He did not return to the reservation when he was discharged from the Navy.

Appellant states he first applied for Sioux benefits on January 27, 1982. At that time the Bureau of Indian Affairs (BIA) determined that appellant was not eligible to receive benefits because he had not submitted an

^{1/} All citations to the United States Code are to the 1982 edition.

application that was disapproved prior to the termination of payment of Sioux benefits on the Rosebud Reservation. This determination was based upon regulations in 25 CFR Part 125 that implement 25 U.S.C. § 474. Section 474 states:

The Secretary of the Interior is hereby directed to continue the allowance of the articles enumerated in section 17 of the Act of March 2, 1889 (23 Stat.L. 894), or their commuted cash value under the Act of June 10, 1896 (29 Stat.L. 334), to all Sioux Indians who would be eligible, but for the provisions of [the Indian Reorganization Act] to receive allotments of lands in severalty under section 19 of the Act of May 29, 1908 (25 Stat.L. 451), or under any prior Act, and who have the prescribed status of the head of a family or single person over the age of eighteen years, and his approval shall be final and conclusive, claims therefor to be paid as formerly from the permanent appropriation made by said section 17 and carried on the books of the Treasury for this purpose. No person shall receive in his own right more than one allowance of the benefits, and application must be made and approved during the lifetime of the allottee or the right shall lapse. Such benefits shall continue to be paid upon such reservation until such time as the lands available therein for allotment on June 18, 1934, would have been exhausted by the award to each person receiving such benefits of an allotment of eighty acres of such land.

Appellant argues that he had a property interest in receiving Sioux benefits, but was prevented from making a proper initial application because he was stationed out of the country in the military. He further argues that his right to receive these benefits is being terminated without notice or proper hearing.

[1] The Board has reviewed the administrative record submitted to it in light of appellant's arguments concerning the effect of his military service on his right to apply for Sioux benefits. There is no evidence that appellee considered what, if any, effect the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. § 525 (1982) might have on the timing of the filing of appellant's application. The Act states that:

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 [Oct. 6, 1942] be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.

This Act applies to Federal as well as State actions. It thus appears that in making its determination, BIA should have formally taken into consideration the time appellant spent in the military service.

The Board notes, however, that in this particular case, even if section 525 had been considered, appellant still would not have been entitled to benefits. According to information furnished to the Board by the Aberdeen Area Office and Rosebud Agency, BIA, there were only 7,360 acres of land on the Rosebud Reservation falling under the provisions of 25 U.S.C. § 474. This allowed payment of benefits to only 92 persons. BIA prepared a roll of the 200 oldest living Rosebud Indians and benefits were allowed the 92 oldest. The youngest person receiving Sioux benefits on Rosebud was born May 23, 1918. See attached letter dated May 16, 1940, from Acting Superintendent, Rosebud Indian Agency, to Mrs. Beulah Amiotte Austin. Appellant here was born on January 10, 1924. Thus, even if appellant had applied for benefits within the time allowed, he still would not have been entitled to any payment.

Because of the finding that appellant would not have been entitled to benefits, BIA's failure to consider the effect of 50 U.S.C. § 525 constitutes harmless error.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the July 6, 1984, decision of the Deputy Assistant Secretary--Indian Affairs (Operations) denying appellant's application for Sioux benefits is affirmed as modified by this opinion.

//original signed
Bernard V. Parrette
Chief Administrative Judge

I concur:

//original signed
Jerry Muskrat
Administrative Judge



UNITED STATES DEPARTMENT OF THE INTERIOR
ROSEBUD INDIAN AGENCY
ROSEBUD, SOUTH DAKOTA

May 16, 1940

Mrs. Beulah Amiotte Austin
Martin, South Dakota

Dear Mrs. Austin:

This will acknowledge receipt of your letter of May 13, inquiring as to your rights to Sioux Benefits.

You are not carried on the Rosebud Sioux Rolls as an allotted Indian and would not be entitled under the laws and regulations existing prior to the passage of the reorganization Act of June 18, 1934 (Stat. 934). Section 14 of this Act provides for the payment of benefits to those who would have become entitled to receive Allotments except for the prohibition against allotments contained in Section 1 of the Act by providing: "Such benefits shall continue to be paid upon such reservations until such time as the lands available therein for allotment at the time of the passage of this Act would have been exhausted by the award to each person receiving such benefits of an allotment of 80 acres of such land." On the Rosebud Reservation this permitted 92 unallotted Indians to receive the benefits.

A roll was prepared of the 200 oldest living unallotted Indians and benefits was allowed the 92 oldest who were still living at the time of the consideration. As the youngest person on that list of 200 was born May 23, 1918, and as the date of your birth was May 1921, there is practically no chance that you will become entitled to receive the benefits.

Respectfully,

//original signed

John A. Barkley
Acting Superintendent