



INTERIOR BOARD OF INDIAN APPEALS

Fort McDowell Mohave-Apache Indian Community v. Acting Phoenix Area Director,
Bureau of Indian Affairs

15 IBIA 255 (08/10/1987)



United States Department of the Interior

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

FORT McDOWELL MOHAVE-APACHE	:	Order Dismissing Appeal
INDIAN COMMUNITY,	:	
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 87-42-A
ACTING AREA DIRECTOR, PHOENIX	:	
AREA OFFICE, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	August 10, 1987

By memorandum of June 23, 1987, the Assistant Secretary--Indian Affairs referred this appeal to the Board of Indian Appeals (Board) for decision. Appellant Fort McDowell Mohave-Apache Indian Community challenged a January 12, 1987, decision of the Acting Phoenix Area Director, Bureau of Indian Affairs (appellee; BIA), holding that appellant's tribal resolution No. 85-18 and tribal bingo code No. 85-01 were of no force and effect because they were not reviewed and approved in accordance with the tribal constitution. Appellee's decision affirmed a June 25, 1986, decision of the Superintendent, Salt River Agency, BIA (Superintendent).

The Board docketed the appeal on June 26, 1987, and ordered BIA to supplement the record with certain documents. Because it appeared that appellant's notice of appeal to the Washington office of BIA may not have been timely under 25 CFR 2.10, which allows 30 days for the filing of a notice of appeal, the Board requested that BIA include a copy of the return receipt card for appellant's copy of appellee's decision.

The requested documents were received by the Board on July 16, 1987. The return receipt card showed that appellant received appellee's decision on January 20, 1987. Appellant's notice of appeal of that decision was dated March 11, 1987, and was received in the Washington office of BIA on March 16, 1987.

On July 16, 1987, the Board ordered appellant to show cause why its appeal should not be dismissed. In its response to that order, appellant argues that 25 CFR 2.18 allows 60 days for the filing of a notice of appeal from an Area Director's decision in a matter on appeal from a Superintendent, because that section provides that an Area Director's decision becomes final 60 days from receipt thereof unless it is appealed. Appellant argues that the

30-day appeal period established in 25 CFR 2.10 applies only to an appeal from a Superintendent's decision to an Area Director or to an appeal from an Area Director's decision which is the initial BIA decision in the matter, but not to a "further appeal" from an Area Director's decision to the Washington office of BIA, when the initial decision was made by a Superintendent. Since it appealed the Superintendent's decision within 30 days and appellee's decision within 60 days, appellant contends that its appeal was timely.

25 CFR 2.18 provides in relevant part:

The Area Director shall render a written decision in each case appealed to him, and he shall include a statement that the decision will become final 60 days from receipt thereof unless a notice of appeal is filed with the Commissioner of Indian Affairs pursuant to §§2.10, 2.11, and 2.13 of this part.

The language of this section, which specifically provides that appeals are to be filed pursuant to section 2.10, refutes appellant's argument that the provisions of 25 CFR 2.18 render the time limit in 25 CFR 2.10 inapplicable to appeals from Area Directors' decisions.

25 CFR 2.10 provides in relevant part:

(a) A notice of appeal shall be . . . filed in the office of the official who made the decision, that the appellant wishes to appeal . . . The notice of appeal must be received in the office of the official who made the decision within 30 days after the date notice of the decision complained of is received by the appellant . . .

(b) No extension of time will be granted for filing of the notice of appeal. Notices of appeal which are not timely filed will not be considered, and the case will be closed.

The Board has previously interpreted the 30-day time limit in section 2.10 as applicable to appeals from Area Directors' decisions in cases where the appeals were "further appeals" from decisions initially made by Superintendents. Parsons v. Deputy Assistant Secretary-- Indian Affairs (Operations), 14 IBIA 79 (1986); Tanana Chiefs' Conference, Inc. v. Juneau Area Director, 14 IBIA 87 (1986). BIA has also interpreted the regulation in this manner. See Parsons, 14 IBIA at 80; Hamlin v. Portland Area Director, 9 IBIA 16, 17 (1981).

Appellant's notice of appeal was not filed within the mandatory time limit established in 25 CFR 2.10. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed as untimely. 1/

//original signed
Anita Vogt
Acting Chief Administrative Judge

//original signed
Kathryn A. Lynn
Administrative Judge

1/ Because of the Board's disposition of this appeal, appellant's motion for a stay of proceedings is denied.