



INTERIOR BOARD OF INDIAN APPEALS

Southern Ute Indian Tribe v. Albuquerque Area Director,
Bureau of Indian Affairs

16 IBIA 190 (08/16/1988)



United States Department of the Interior

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

SOUTHERN UTE INDIAN TRIBE,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	
ACTING AREA DIRECTOR,	:	Docket No. IBIA 88-30-A
ALBUQUERQUE AREA OFFICE,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 16, 1988

On June 28, 1988, the Board of Indian Appeals made a preliminary determination that it had jurisdiction over this appeal and requested the administrative record. The Board's order was issued following receipt of a motion filed by appellant Southern Ute Indian Tribe, through counsel, Richard L. Sisk, Esq., Durango, Colorado, requesting the Board to assume jurisdiction over the appeal pursuant to 25 CFR 2.19. ^{1/} Appellant stated that its appeal had been pending before the Assistant Secretary--Indian Affairs and had been ripe for decision for more than 30 days, but that no decision has been rendered. Appellant sought review of a March 3, 1988, decision of the Acting Albuquerque Area Director concerning its Indian Child Welfare Act grant application for FY 1988.

The Board received the administrative record in this appeal on August 11, 1988. The record includes a copy of a June 21, 1988, decision rendered by the Assistant Secretary in this appeal.

The appeal is docketed under the above case name and number, which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that the appeal be dismissed.

Pursuant to 43 CFR 4.310(a), appellant's motion for Board review was filed on June 23, 1988, the date it was mailed. Had the Assistant Secretary's decision not been issued by that date, the Board would have acquired jurisdiction over this appeal when appellant's motion was filed. See Interim Ad Hoc Committee of

^{1/} 25 CFR 2.19 provides in relevant part:

“(a) Within 30 days after all time for pleadings (including extension granted) has expired, the Commissioner of Indian Affairs [or BIA official exercising the administrative review authority of the Commissioner] shall:

“(1) Render a written decision on the appeal, or
“(2) Refer the appeal to the Board of Indian Appeals for decision.

“(b) If no action is taken by the Commissioner within the 30-day time limit, the Board of Indian Appeals shall review and render the final decision.”

the Karok Tribe v. Sacramento Area Director, 13 IBIA 76, 83, 92 I.D. 46, 50 (1985). However, because the Assistant Secretary's decision had already been rendered at the time appellant's motion was filed, the motion failed to vest the Board with jurisdiction over this appeal.

The Assistant Secretary's June 21 decision states that it is final for the Department. The Board does not have general review authority over the Assistant Secretary's decisions, except as they are specially referred to it on a case-by-case basis or through rulemaking. See, e.g., Falcon Lake Properties v. Assistant Secretary--Indian Affairs, 15 IBIA 286 (1987); Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80, 90 I.D. 521 (1983); 25 CFR 13.15. This matter has not been so referred to the Board.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Albuquerque Area Director's March 3, 1988, decision is dismissed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge