



INTERIOR BOARD OF INDIAN APPEALS

Bernadette L. Raymond v. Acting Aberdeen Area Director,
Bureau of Indian Affairs

19 IBIA 41 (10/25/1990)



United States Department of the Interior

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

BERNADETTE L. RAYMOND

v.

ACTING ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-144-A

Decided October 25, 1990

Appeal from a decision denying a grant application under the Indian Business Development Program.

Appeal docketed; decision vacated and case remanded.

1. Appeals: Jurisdiction--Board of Indian Appeals: Jurisdiction--Bureau of Indian Affairs: Administrative Appeals: Generally

Once an appeal is filed with the Board of Indian Appeals from a decision issued by a Bureau of Indian Affairs official, the Bureau loses jurisdiction over the matter except to participate in the appeal as a party.

2. Appeals: Generally--Board of Indian Appeals: Jurisdiction--Bureau of Indian Affairs: Administrative Appeals: Generally

If, during the course of an appeal to the Board of Indian Appeals, the Bureau of Indian Affairs determines that the decision on appeal was incorrect, it can: (1) request that the decision be vacated and the matter remanded in order to grant the relief the appellant requests, (2) confess error and ask the Board to reverse the decision, or (3) enter into a settlement with the appellant. Each of these actions are taken through the filing of an appropriate document with the Board.

APPEARANCES: Bernadette L. Raymond, pro se; William C. Gipp, Aberdeen Area Director, Bureau of Indian Affairs, U.S. Department of the Interior, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

On August 30, 1990, the Board of Indian Appeals (Board) received a notice of appeal from Bernadette L. Raymond (appellant). Appellant sought review of a July 25, 1990, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director), denying her application for an Indian Business Development grant in the amount of \$6,000 for the purchase of a grocery store.

This appeal is docketed under the above case name and number which should be cited in all future correspondence concerning the matter. For the following reasons, however, the Board vacates the Area Director's decision and remands this matter to him for further action.

On October 1, 1990, the Board received a letter from the Area Director in which he stated: "After further review and consideration, we have since notified Ms. Raymond that her Indian Business Development Grant Application has been approved. Therefore, Ms. Raymond's appeal would be moot and will not require any further action." On October 1, 1990, the Board ordered the Area Director to provide it with a copy of his approval of the grant application and gave appellant an opportunity to state whether or not she agreed that her appeal was moot.

Responses were received from both the Area Director and appellant on October 22, 1990. The Area Director transmitted a copy of a September 25, 1990, letter which he had sent to appellant. The letter states: "We have reconsidered your application for an Indian Business Development Grant in the amount of \$6,000, in conjunction with [a Small Business Administration] guaranteed loan in the amount of \$14,400 * * * and a Standby Agreement in the amount of \$3,600 from [an individual], and are pleased to inform you that it has been approved." Appellant stated that the action set forth in this letter would satisfactorily resolve her appeal.

[1] The problem raised by this scenario is procedural, rather than substantive. The Board has previously held that the ultimate decision of whether or not to approve a grant under BIA's Indian Business Development program is discretionary with BIA, and that it will not substitute its judgment for that of BIA. Honaghaahnii Marketing & Public Relations, Inc. v. Navajo Area Director, 18 IBIA 144, 148 (1990). However, once an appeal is filed with the Board from a decision issued by a BIA official, BIA loses jurisdiction over the matter except to participate in the appeal as a party. As the Board stated in Tonkawa Tribe of Oklahoma v. Acting Anadarko Area Director, 18 IBIA 370, 371 (1990):

In Interim Ad Hoc Committee of the Karok Tribe v. Sacramento Area Director, 13 IBIA 76, 83-85, 92 I.D. 46, 50-51 (1985), the Board held that under long established Departmental precedents, BIA lost jurisdiction over a matter once it was notified that an appeal had been filed. This rule was established to prevent the obvious confusion that would result if two offices of the Department were to exercise jurisdiction over the same matter simultaneously. Under this rule, when [the Area Director] received appellant's original notice of appeal, [he] lost authority to take further action in this matter, except to participate as a party to the appeal.

This rule is not imposed merely to force the Area Director to "jump through procedural hoops" or to "protect the Board's turf." The requirement is

part of every orderly review system, including BIA's own internal review system, ^{1/} and is intended to ensure that only one forum has authority to act at any particular point in time so that the parties involved know exactly where they stand.

[2] In the present case, the Area Director proceeded improperly. Once appellant filed an appeal to the Board, the Area Director lacked independent authority to grant appellant's application. This does not mean that the Area Director could not determine that the grant application should be approved. If, during the course of an appeal, BIA determines that the original decision was incorrect, it can: (1) request that the decision be vacated and the matter remanded to BIA in order to grant the relief the appellant requests, (2) confess error and ask the Board to reverse the decision, or (3) enter into a settlement with the appellant. Each of these actions are taken through the filing of an appropriate document with the Board.

Thus, when the Area Director determined in this case that his earlier decision was incorrect, he should have presented this information to the Board and asked for authority to grant the relief appellant requested. Because the Board actively encourages resolution of disputes between the parties, any such request from the Area Director would have been expeditiously and favorably considered.

The present posture of this case, however, requires the Board to determine what effect to give to the Area Director's September 25, 1990, notice to appellant that her grant application had been approved. See Tonkawa Tribe of Oklahoma, *supra*. The Board has determined to construe the Area Director's September 25, 1990, letter as a request that the matter be remanded to him to take the action set forth in that letter. Appellant has stated that she has no objection to such action.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Aberdeen Area Director's July 25, 1990, decision is vacated and this matter is remanded to him for implementation of the action set forth in his letter of September 25, 1990.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge

^{1/} See, e.g., Fox v. Muskogee Area Director, 18 IBIA 444, 449 n.8 (1990).