



INTERIOR BOARD OF INDIAN APPEALS

Donald W. Pease et al. v. Billings Area Director, Bureau of Indian Affairs

19 IBIA 88 (11/27/1990)



# United States Department of the Interior

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

DONALD W. PEASE, WILLIAM P. PEASE, and MARJEAN K. PEASE WARD, Appellants	:	Order Dismissing Appeal
	:	
	:	
v.	:	Docket No. IBIA 91-8-A
	:	
BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	November 27, 1990

This is an appeal from an August 27, 1990, decision of the Billings Area Director, Bureau of Indian Affairs, requiring Donald W. Pease to repay \$2,075.60 attributable to disallowed participation in the Indian Acute Distress Feed Donation Program during the winter of 1985-86. The Area Director found, based on an audit conducted by the Department's Office of Inspector General, that Pease had misrepresented the number of livestock he owned when he applied for the program.

Donald Pease received the Area Director's decision on August 29, 1990, and the notice of appeal was postmarked October 5, 1990. His appeal was untimely under 43 CFR 4.332(a), which requires that a notice of appeal be mailed "within 30 days after receipt by the appellant of the decision from which the appeal is taken." The Area Director's decision correctly informed him of the time requirement. By order of October 11, 1990, therefore, the Board dismissed this appeal as untimely as to Donald W. Pease.

No copies of the Area Director's decision were mailed to William P. Pease and Marjean K. Pease Ward, although they were named as interested parties in Donald Pease's appeal to the Area Director. 25 CFR 2.7 requires that an Area Director give written notice of a decision to all interested parties known to him; the section further provides that the right to appeal continues until written notice of a decision, including notice of appeal rights, is given. Therefore the Board did not summarily dismiss this appeal as to these two appellants. However, since it appeared that they might lack standing to bring the appeal because the Area Director's decision required only Donald Pease to make the repayment, the Board ordered them to show cause why their appeal should not be dismissed. The Board stated that, in order to demonstrate that they had standing to bring this appeal, they must show that they themselves were liable for the repayment required to be made by Donald W. Pease.

Appellants' response to the Board's order was received on November 19, 1990. It states in part:

Since this is a family operation, William P. Pease and Marjean K. Pease Ward are necessary parties to this matter. It is practically

impossible to separate these folks into separate groups since the operation is operated conjointly. When Donald W. Pease filed his Appeal with this Court, he attached a copy of the Application and Certification for the services and program in question which was duly signed by all three Appellants.

Appellants' response fails to demonstrate that the individual participants in the family business are liable for each others' obligations. Further, the affidavits appellants submitted with their notice of appeal indicate that, in December 1985, when they applied for the feed donation program, they owned their livestock individually and not jointly.

William P. Pease and Marjean K. Pease Ward, as well as Donald Pease, signed Donald W. Pease's application for the program, certifying that the information contained therein was accurate. The application apparently included livestock owned by each of them. However, for reasons not entirely clear, BIA apparently did not consider the two co-signers responsible for the alleged misrepresentation. In any event, it did not specifically require them to make repayment. In order to find that William P. Pease and Marjean K. Pease Ward have standing to bring this appeal, the Board would also have to find that they are liable for Donald Pease's obligation. The Board cannot conclude that they are so liable. 1/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal, having previously been dismissed as to Donald W. Pease, is also dismissed as to William P. Pease and Marjean K. Pease Ward, because these two appellants lack standing to bring the appeal.

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//original signed  
Anita Vogt  
Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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1/ The notice of appeal to the Board indicates that one of the arguments that might have been made, had this appeal continued, was that it was unfair for BIA to require only Donald Pease to make the repayment. Donald Pease clearly would have had standing to make this argument, as well as other arguments, had he filed a timely notice of appeal.