



INTERIOR BOARD OF INDIAN APPEALS

Sauk-Suiattle Indian Tribe v. Portland Area Director, Bureau of Indian Affairs

20 IBIA 238 (09/06/1991)



United States Department of the Interior

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

SAUK-SUIATTLE INDIAN TRIBE

v.

PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-115-A

Decided September 6, 1991

Appeal from the denial of a fiscal year 1990 Core Management Grant.

Affirmed.

1. Board of Indian Appeals: Jurisdiction--Indians: Financial Matters: Financial Assistance

Decisions concerning whether a tribe's application for a Core Management grant should be funded are committed to the discretion of the Bureau of Indian Affairs. In reviewing such decisions, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

2. Administrative Procedure: Burden of Proof--Indians: Financial Matters: Financial Assistance

In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency action complained of is erroneous or not supported by substantial evidence.

3. Indians: Financial Matters: Financial Assistance

Core management grants are made available to small tribes to assist them in establishing and maintaining sound management practices and fiscal control systems.

APPEARANCES: Lawrence Joseph, Chairman, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Sauk-Suiattle Indian Tribe seeks review of a June 13, 1990, decision of the Portland Area Director, Bureau of Indian Affairs (BIA; Area

Director), denying its application for an FY 1990 Core Management Grant. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Background

The Portland Area Office was allocated \$235,000 in funding for the FY 1990 Core Management grant program. Twenty-five tribes submitted FY 1990 grant applications to the Area Office, requesting a total of \$859,921. After reviewing and ranking the applications based upon the scores given by a panel of reviewers, the Area Director awarded grants to the eight highest ranking applicants.

Appellant's score of 85.3 placed it tenth on the list. By letter dated April 30, 1990, the Area Director informed appellant that its application did not receive a high enough score to be funded. The Area Director's decision stated that an appeal could be filed under 25 CFR Part 2. On May 10, 1990, appellant filed a notice of appeal with the Area Director. The notice asked the Area Director to reconsider the denial based upon appellant's urgent need for this funding. By letter dated June 13, 1990, the Area Director repeated the information given on April 30, 1990.

The Board received appellant's notice of appeal from this decision on June 25, 1990. Only appellant filed a brief on appeal.

Discussion and Conclusions

[1] In Lower Elwha Tribe v. Portland Area Director, 18 IBIA 50, 51 (1989), the Board discussed its role in reviewing BIA decisions concerning whether a particular Core Management grant application should be funded. These decisions, the Board held, are committed to the discretion of BIA. The Board stated: "In reviewing such decisions it is not the Board's function to substitute its judgment for that of BIA. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion." Accord, e.g., Washoe Tribe of Nevada and California v. Acting Phoenix Area Director, 19 IBIA 190, 191 (1991), and cases cited therein.

[2] Furthermore, the Board has held that the appellant bears the burden of proving the error in the decision not to fund the appellant's grant application. Winnebago Tribe of Nebraska v. Aberdeen Area Director, 18 IBIA 441 (1990); Stillaquamish Tribe v. Portland Area Director, 18 IBIA 89 (1989).

Appellant basically disputes the scores given to its application by the rating panel. As to criterion 1, appellant notes that three of the four reviewers gave its application a score of 20 and made positive comments; while the fourth reviewer gave it a score of 14 with no comments.

It appears that appellant wishes to have the fourth reviewer's score removed from consideration.

There is no requirement that reviewers make comments on each criterion. The mere fact that one reviewer felt that the application was not as strong as other reviewers does not require that the lowest score be dropped from consideration.

In regard to criteria 2 and 3, appellant objects that it was downgraded because of a comment by one reviewer that janitorial services and facility and grounds maintenance were not covered under the Core Management program. Appellant contends that janitorial services were required because of its goal of computerization and because computers require a dust-free, temperature-controlled environment. Appellant admits that such services are not shown as examples under 25 CFR 278-21(b). ^{1/}

[3] In Lovelock Paiute Tribe v. Acting Phoenix Area Director, 18 IBIA 249, 251 (1990), the Board examined section 278.21 and found "that Core Management grants are intended to bolster the managerial and financial capabilities of small tribes." The purposes of the Core Management program are reasonably interpreted as excluding janitorial and facility/grounds maintenance services.

Finally, appellant states that it met the requirements of criteria 4 and 5. This bare assertion is not sufficient to sustain appellant's burden of proving error in the Area Director's decision.

^{1/} Section 278.21(b) provides:

"In order to accomplish the purpose of the grants under this subpart, applicants may request assistance to meet their respective management needs in a variety of ways. Some examples of how applicants may use core management grants are as follows:

"(1) Employ an overall programs administrator and necessary support staff if applicant operates several Federal programs and lacks financial resources to employ such personnel.

"(2) Employ a bookkeeper when a multi-tribal organization which operates several Federal programs experiences problems because of untrained bookkeeping staff.

"(3) Hire a 'circuit rider' accountant to establish and maintain a financial management system for each member tribe of a multi-tribal organization. A large multi-tribal organization may establish a 'circuit rider office' staffed by an accountant and necessary support staff.

"(4) Employ a tribal planner or economic development specialist if the tribe has substantial, identifiable undeveloped resources and does not have funds to plan for the development of such resources.

"(5) Employ staff to address specific and/or identifiable managerial problems under a one time only grant.

"(6) Retain an accountant to perform annual independent audits."

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the June 13, 1990, decision of the Portland Area Director is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge