



INTERIOR BOARD OF INDIAN APPEALS

Unnamed Members of the Lower Sioux Indian Community
v. Minneapolis Area Director, Bureau of Indian Affairs

22 IBIA 146 (06/24/1992)



United States Department of the Interior

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

UNNAMED MEMBERS OF THE	:	Order Docketing and Dismissing
LOWER SIOUX INDIAN	:	Appeal
COMMUNITY,	:	
Appellants	:	
	:	
v.	:	Docket No. IBIA 92-140-A
	:	
MINNEAPOLIS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 24, 1992

On March 30, 1992, the Board of Indian Appeals (Board) received a notice of appeal filed by an attorney in Minneapolis, Minnesota. Counsel stated that the appeal was filed on behalf of "130 disenfranchised members of Lower Sioux Ind. Com." Counsel further stated that he was appealing from the failure of the Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA), to respond timely to a request for action pursuant to 25 CFR 2.8. Section 2.8 establishes procedures for appealing from a BIA official's inaction.

By order dated April 1, 1992, the Board gave counsel an opportunity to respond to three problems with the notice of appeal:

Initially, although counsel states that he is representing 130 members of the Lower Sioux Indian Community, no individuals are identified as appellants. A notice of appeal must show that the appeal is brought by real persons, who have standing to contest the Area Director's action or inaction. Counsel is, therefore, ordered to identify each of his clients and show proof that he has the authorization of those clients to proceed in this matter on their behalf.

Furthermore, although it appears that the March 13, 1992, letter sent by counsel to the Area Director otherwise meets the requirements set forth in 25 CFR 2.8 for a request for action, it also did not identify any person as an appellant. Section 2.8 states that the inaction of a BIA official may be raised by "a person or persons." The materials presented to the Board do not show that the March 13, 1992, letter was filed on behalf of a person or persons who had given counsel authority to pursue this matter on their behalf. Therefore, counsel is also ordered to show why his March 13, 1992, letter should be considered a proper request for action pursuant to 25 CFR 2.8.

Finally, if the March 13, 1992, letter is treated as a proper request for action under section 2.8, counsel has not shown that the Area Director failed to take action in accordance with 2.8(b). Because the Area Director had 10 days from the date on which he received a proper request for action under section 2.8 in which to respond, proof of the date of receipt is an essential prerequisite to Board jurisdiction. Counsel is ordered to prove the date on which the Area Director received the March 13, 1992, letter.

Counsel was given until May 5, 1992, in which to respond, and was informed that “[f]ailure to show cause and/or jurisdiction will result in the dismissal of this appeal.” The Board has not received a response to its order.

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 docketed under the above case name and number, and is dismissed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge