



INTERIOR BOARD OF INDIAN APPEALS

Shaahook Group of Capitan Grande Band of Diegueno Mission Indians
v. Director, Office of Tribal Services, Bureau of Indian Affairs

27 IBIA 90 (12/19/1994)

Reconsidering:
27 IBIA 43



United States Department of the Interior

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

SHAAHOOK GROUP OF CAPITAN	:	Order on Reconsideration
GRANDE BAND OF DIEGUENO	:	
MISSION INDIANS,	:	
Appellant	:	
	:	
v.	:	Docket No. IBIA 95-42-A
DIRECTOR, OFFICE OF TRIBAL	:	
SERVICES, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	December 19, 1994

On December 16, 1994, the Board of Indian Appeals (Board) received a motion for reconsideration of its November 29, 1994, order in the above case. 27 IBIA 43. The appeal was filed under 25 CFR 2.8, which allows a person to make the inaction of an official of the Bureau of Indian Affairs (IBIA) the subject of an appeal to the next appellate level. In its order the Board held that the Assistant Secretary - Indian Affairs attempted to assume jurisdiction over the appeal after the expiration of the time periods established in 25 CFR 2.20(c) and 43 CFR 4.332(a). However, based on an October 18, 1994, letter to appellant, the Board found that the Director, Office of Tribal Services, Bureau of Indian Affairs (Director), was working on the appeal. The Board dismissed the appeal pending before it in order that the Director might continue to address the matter. The order stated: "Should the Director not provide appellant with a response within the time frames established in her October 18, 1994, letter, appellant may seek Board review under 25 CFR 2.8." 27 IBIA at 45.

The request for reconsideration states that the Assistant Secretary's memorandum assuming jurisdiction was sent to the Board by facsimile transmission (fax) on November 14, 1994. Attached to the motion was a copy of a fax activity report showing that a one-page document was sent to one of the administrative judges on the Board on November 14, 1994. The fax number shown is the correct number for the Board. Also attached is an affidavit from the individual who faxed the memorandum. Unfortunately, the Board did not receive the faxed copy of the memorandum.

The Director's request for reconsideration states:

The [BIA] intends to act on the request of [appellant] within the 60 day time period from November 14, 1994, when, based on the directions of the Office of Hearings and Appeals, it was assumed that the Assistant Secretary - Indian Affairs had assumed jurisdiction. This 60 day period permitted by 25 C.F.R. § 2.20(c) ends January 13, 1995.

The [BIA] will not be able to meet the time period set forth in the October 18, 1994, letter, referenced by * * * the [Board], which would require action by December 19, 1994. * * * Therefore, the [Director] finds it necessary to ask for reconsideration in order that the time period for action expire on January 13, 1994.

On December 15, 1994, [Departmental] counsel spoke with [appellant's counsel], and informed her that [BIA] would be filing this request and that [BIA] intended to act by January 13, 1995. Appellant's counsel does not object to this request.

As the official before whom the matter is now pending, the Director has authority to enter into an agreed extension of the time for action without regard to the Board's order. However, to the extent that the parties might read the order as limiting that authority, the Board amends the order to state:

“Should the Director not provide appellant with a response within the timeframes established in her October 18, 1994, letter, or any other mutually agreed upon extension of that time period, appellant may seek Board review under 25 CFR 2.8.”

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1 and 4.315, the Board's November 29, 1994, order in this case is amended as set forth in this order.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge