



INTERIOR BOARD OF INDIAN APPEALS

Peoria Tribe of Indians of Oklahoma v. Muskogee Area Director,
Bureau of Indian Affairs

32 IBIA 81 (02/26/1998)

Related Board case:
27 IBIA 113



United States Department of the Interior

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

PEORIA TRIBE OF INDIANS	:	Order Vacating Decision and
OF OKLAHOMA,	:	Remanding Case
Appellant	:	
	:	
v.	:	Docket No. IBIA 97-53-A
	:	
MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 26, 1998

The Peoria Tribe of Indians of Oklahoma (Tribe) filed a Notice of Appeal seeking review of an October 24, 1996, letter from the Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA). According to the Tribe, that letter sets out the Area Director's decision "not to comply" with the decision issued by the Board of Indian Appeals (Board) in Peoria Tribe of Indians of Oklahoma v. Acting Muskogee Area Director, 27 IBIA 113 (1995) (Peoria I). For the reasons discussed below, the Board vacates the Area Director's decision and remands this case for further consideration in accordance with this decision.

Peoria I addressed the disposition of unclaimed per capita shares of judgment funds payable to Peoria descendants. The Board extensively examined the relevant statutes, and will not repeat that discussion here. In summary, the Board reviewed 25 U.S.C. §§ 861-861c (1994), 1/ which repealed Appellant's termination as a Federally recognized Indian tribe; 25 U.S.C. §§ 1221-1227, which appropriated funds and established procedures for the payment of judgment funds to the Tribe; and 25 U.S.C. §§ 1401-1407, which established a general scheme for the distribution of judgment funds. The Board found nothing in either 25 U.S.C. §§ 861-861c by itself, or in that act taken together with 25 U.S.C. §§ 1401-1407, "that repeals or modifies the reversion provision in 25 U.S.C. § 1226." 27 IBIA at 120.

Section 1226 provides:

Any per capita share, whether payable to a living enrollee or to the heirs or legatees of a deceased enrollee, which the Secretary of the Interior is unable to deliver within two years after the date the check is issued, and all unexpended tribal and judgment funds set aside for tribal roll preparation and distribution, shall revert to the Peoria Tribe, and all claims for such per capita shall thereafter be barred forever.

The Board therefore held "that 25 U.S.C. § 1226 requires that the unclaimed shares of Peoria descendants revert to" the Tribe. 27 IBIA at 120.

1/ All further citations to the United States Code are to the 1994 edition.

Following the issuance of Peoria I, the Peoria Tribal Business Committee passed a resolution on February 7, 1995, asking that BIA release to it the per capita shares being held for nine individuals: Cayce Roberta Elizabeth Hiltbrand; Lesley Marie Spears; Barbara Ann Garig; Daniel Lee Smith; Grattan Gregory McVay; Alex E. Stand, Jr.; Ruth May Humphrey Estate; Wesley White; and Christine Stand. In a February 9, 1995, letter to the Acting Superintendent, Miami Agency, BIA, the Tribe detailed its efforts to locate these individuals.

By letter dated September 8, 1995, the Area Director notified the Tribe of the status of the per capita shares for the nine individuals named above, as well as those for Judith A. Powell and Micci J. McIntyre, whose shares the Tribe had requested prior to the decision in Peoria I. The Area Director stated that Hiltbrand and Powell had been located and paid; Spears and Garig had been located and distribution was pending; Smith had been located and distribution was awaiting verification of his identity; McIntyre had been located but because of a question concerning her competency, her share was to be protected and preserved under 25 U.S.C. § 1403(b)(3); McVay was deceased and payment was awaiting determination of his heirs; Alex Stand had received a payment as a Peoria tribal member, and his second per capita share had reverted to the Tribe; and the shares of Humphrey, White, and Christine Stand had reverted to the Tribe because these individuals died prior to the effective date of the distribution plan for the judgment fund.

The next document in the record furnished to the Board is an October 8, 1996, letter to the Area Director from the Tribe arguing that the Area Director was not in compliance with the Board's decision in Peoria I, and that he "should immediately refrain from making any additional disbursements to individuals." Oct. 8, 1996, Letter at 1. 2/ In response to this letter, the Area Director issued the October 24, 1996, letter which is the subject of the Tribe's Notice of Appeal. After stating that the Tribe had erroneous information concerning the dollar amount of unpaid per capita shares, the Area Director noted:

The statutory burden is placed upon this office, acting pursuant to delegated authority from the Secretary, to attempt to locate enrollees, or heirs or legatees of deceased enrollees and deliver the per capita share. When after two years of the date of the issuance of the check, this office is unable to deliver the per capita share, then those shares are to revert to the Tribe.

Oct. 24, 1996, Letter at 2.

The Area Director informed the Tribe that Smith's per capita share was in the process of reverting to the Tribe because, although BIA had located several individuals with the name Daniel Lee Smith, it had not been able to verify that any of those individuals was the one in question.

2/ This letter was apparently not the next document relating to this issue because it references a July 1, 1996, letter to the Area Director.

The Tribe appealed the October 24, 1996, letter to the Board. Only the Tribe filed a brief.

The Tribe argues:

The Administrative Record contains the Muskogee Area Director's letter of September 8, 1995, to the Tribe regarding the agency's actions with respect to the Tribe's Resolutions requesting the release of unclaimed per capita funds. Neither the Board's [decision in Peoria I], nor the law cited by the Board * * *, give the Area Director any discretion to distribute funds to individuals after expiration of the [statute] of limitations. However, despite the [Board's] Order directing reversion of the funds in question, the Area Director's letter of September 8, 1995, to the Tribe specifies the action the Area Director is continuing to take in an effort to locate and distribute funds to individuals. It may well be that the Area Director has distributed funds to individuals who now are in no position to repay them upon determination that the original distribution was contrary to law. However, the Area Director should not be entitled to profit from the agency's original error at the expense of the Tribe. By application of law, the Tribe is entitled to reversion of the funds in question and the Area Director should accordingly be ordered immediately to distribute to the Tribe the unclaimed funds in question as represented by the individual accounts identified in the Area Director's letter of September 8, 1995. Parenthetically, the Tribe recognizes that the funds with respect to the Peoria descendant Daniel Lee Smith have been paid to the Tribe * * * but * * * the remaining funds, together with accrued interest, remain due and unpaid.

Opening Brief at 3-4.

All of the Tribe's arguments in its Opening Brief are addressed to the Area Director's September 8, 1995, letter, not to his October 24, 1996, letter, which was the subject of the Notice of Appeal. Ordinarily, the failure to take a timely appeal from a BIA decision renders that decision final for the Department. See 25 C.F.R. § 2.6(b). However, the Board held in Central Council of Tlingit and Haida Indian Tribes of Alaska v. Acting Chief, Division of Social Services, 28 IBIA 206, 207-08 (1995), that

25 CFR 2.7, which is part of the appeal process set out in 25 CFR Part 2, requires a BIA deciding official to inform interested parties of the right to appeal, the identity of the official to whom an appeal may be taken, and the 30-day time limit on the filing of an appeal. 25 CFR 2.7(b) states that if this information is not given, the decision is valid, but the time for filing an appeal is tolled until the information is given. The Board has strictly enforced this regulatory provision. See, e.g., Johnson v. Acting Minneapolis Area Director, 28 IBIA 104 (1995); Sac and Fox Nation v. Chief, Branch of Judicial Services, 26 IBIA 203 (1994).

The Area Director's September 8, 1995, letter did not contain appeal information. In the absence of proof that the Tribe was informed of the appeal procedures, the Board declines to conclude that this is an untimely appeal from the September 8, 1995, decision, and therefore addresses the issues raised.

The Area Director's September 8, 1995, letter deals with eleven individuals. At that time, the per capita shares of four individuals--Alex Stand, Humphrey, White, and Christine Stand--had reverted to the Tribe. Smith's per capita share has since reverted to the Tribe. It therefore appears that these shares are not at issue here.

The shares of two individuals--Hiltbrand and Powell--have been paid to them. The present status of the shares of Spears, Garig, McVay, and McIntyre are not clear from the record. It is also not clear whether the Tribe is claiming entitlement to the shares already paid to individuals, or only to those shares which have not yet been paid.

Under 25 U.S.C. § 1226 and the Board's decision in Peoria I, unclaimed shares are to revert to the Tribe if those shares cannot be delivered "within two years after the date the check is issued." Totally absent from the record before the Board is any indication of when the checks under consideration were issued. Although in its Opening Brief the Tribe refers to the "statute of limitations"--by which the Board assumes it means the two-year provision in section 1226--the Tribe also does not provide any information on when the checks were issued. Indeed, the Tribe may not be privy to this information.

Because it is not clear precisely which shares the Tribe claims, and because the administrative record in this matter does not contain information as to when any of the checks under consideration were issued, the Board cannot either sustain or reverse the Area Director's decision.

Therefore, pursuant to the authority delegated to the Board of Indian Affairs by the Secretary of the Interior, 43 C.F.R. § 4.21, the Muskogee Area Director's September 8, 1995, and October 24, 1996, decisions are vacated and this matter is remanded to the Area Director for a determination of which shares the Tribe claims and when checks for those shares were issued. If the checks were not delivered to the individuals within two years after the date they were issued, the per capita shares should have reverted to the Tribe.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge