



INTERIOR BOARD OF INDIAN APPEALS

William F. Stogsdill v. Southern Plains Regional Director, Bureau of Indian Affairs

35 IBIA 157 (08/23/2000)



United States Department of the Interior

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

WILLIAM F. STOGSDILL, Appellant	:	Order Docketing and Dismissing Appeal and Remanding Matter to the Regional Director for Clarification of Intent
v.	:	
SOUTHERN PLAINS REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	Docket No. IBIA 00-106-A August 23, 2000

Appellant William F. Stogsdill seeks review of a July 27, 2000, decision of the Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), declining to issue Appellant a certificate of degree of Indian blood (CDIB). For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal for lack of jurisdiction, but remands the matter to the Regional Director for clarification of his intent as to the finality of his decision.

Appellant sought a CDIB from the Superintendent, Anadarko Agency, BIA. By letter dated September 14, 1998, the Superintendent declined to issue a CDIB, stating that Appellant had not provided acceptable documentation of descendency from a member of the Delaware Tribe of Western Oklahoma. The Superintendent informed Appellant of his right to appeal to the Anadarko Area Director, now the Southern Plains Regional Director.

On July 27, 2000, the Regional Director also declined to issue Appellant a CDIB, and informed Appellant that he could appeal to the Board. Appellant filed a timely notice of appeal in accordance with the Regional Director's instructions.

The issuance of CDIBs is governed by 25 C.F.R. Part 62. Section 62.4(a) provides: "A person who is the subject of an adverse enrollment action may file or have filed on his/her behalf an appeal. An adverse enrollment action is: * * * (6) The certification of degree of Indian blood by a Bureau official which affects an individual."

25 C.F.R. § 62.10(a) provides that when a Superintendent has taken an adverse enrollment action, the appeal is to the Regional Director. The subsection states: "The [Regional] Director shall make a decision on the appeal which shall be final for the Department [of the

Interior] and shall so state in the decision. * * * Provided that, the [Regional] Director may waive his/her authority to make a final decision and forward the appeal to the Assistant Secretary [- Indian Affairs] for final action.” See Harrison v. Acting Director, Office of Tribal Services, 32 IBIA 49 (1998); Jackson v. Muskogee Area Director, 32 IBIA 45 (1998); McClure v. Acting Muskogee Area Director, 27 IBIA 154 (1995).

As further noted in the decisions just cited, nothing in 25 C.F.R. Part 62 provides a role for the Board in deciding appeals from adverse enrollment actions. In accordance with its prior holdings, the Board concludes that it lacks jurisdiction over this appeal.

However, the Board finds that it must nevertheless remand this matter to the Regional Director for clarification.

McClure was a case in which the Acting Muskogee Area Director had twice advised the appellant that his decision was final for the Department. However, apparently because of the persistence of the appellant, the Area Director ultimately told her that she could appeal to the Board. After reviewing 25 C.F.R. § 62.10, the Board concluded that the Area Director was correct in stating that his decision was final for the Department. It therefore dismissed McClure’s appeal for lack of jurisdiction.

The situation here is different because the Regional Director did not state in his decision that it was final for the Department. Neither is there any indication that he forwarded the appeal to the Assistant Secretary - Indian Affairs for a final decision. Therefore, it is impossible to determine from the decision whether or not the Regional Director intended to exercise his authority to issue a decision final for the Department. Without this information, Appellant cannot know whether his appeal is still before the Department, or whether he must now proceed to Federal court. The Board thus finds that this matter must be remanded to the Regional Director for clarification as to his intent as to the finality of his July 27, 2000, decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Southern Plains Regional Director’s July 27, 2000, decision is docketed, but dismissed for lack of jurisdiction. The matter is remanded to the Regional Director for clarification of his intent under 25 C.F.R. § 62.10(a).

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge