



DEPARTMENT OF THE INTERIOR HEARINGS DIVISION

Susanville Indian Rancheria v. Director, California Area Office, Indian Health Service

Docket No. IBIA 97-89-A (08/16/2002)

Related Indian Self-Determination Act cases:

Administrative Law Judge decision, 04/06/2001

Health and Human Services Appeals Board decision, 05/29/2001

Administrative Law Judge decision, 12/14/2001

Administrative Law Judge decision on Equal Access to Justice Act claim, 12/09/2002



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
HEARINGS DIVISION  
801 I STREET  
SUITE 131  
SACRAMENTO, CA 95814

SUSANVILLE INDIAN RANCHERIA	)	DOCKET NO. IBIA 97-89-A
Appellant	)	(HHS DAB DOCKET NO. A-02-30)
	)	
vs.	)	DECISION ON APPLICATION
	)	FOR FEES AND EXPENSES
DIRECTOR, CALIFORNIA AREA OFFICE,	)	
INDIAN HEALTH SERVICE	)	
Appellee	)	

## DECISION ON APPLICATION FOR FEES AND EXPENSES

The law firm of Hobbs, Straus, Dean & Walker, LLP, has submitted an application for fees and expenses related to this matter under the Equal Access to Justice Act (hereinafter EAJA). The award requested is in the amount of \$115,946.44.<sup>1</sup>

Under EAJA, a prevailing party in an adversary adjudication is entitled to “fees and expenses incurred by that party in connection with that proceeding,” unless the adjudicative officer makes certain findings. 5 U.S.C. § 504(a)(1). EAJA applies to appeals brought under the Indian Self-Determination and Education Assistance Act (ISDA). 25 CFR 900.177. EAJA claims in ISDA cases are subject to the Department of the Interior’s EAJA regulations found at 43 CFR Part 4, Subpart F. See 25 CFR 900.177; 43 CFR 4.601-4.619.

“The EAJA renders the United States liable for attorney’s fees for which it would not otherwise be liable, and thus amounts to a waiver of sovereign immunity. Any such waiver must be strictly construed in favor of the United States.” Ardestani v. Immigration and Naturalization Service, 502 U.S. 129, 137 (1991) (citations omitted); See Sorenson v. Mink, 239 F.3d 1140, 1148 (9<sup>th</sup> Cir. 2001) (following Ardestani).

The application is denied because Appellant Susanville Indian Rancheria (the Tribe) has not met the requirements of the applicable EAJA regulations by submitting an application signed by “the applicant or an authorized officer of the applicant.” 43 CFR 4.608(f). Instead, the application is signed by Geoffrey D. Strommer, who is an attorney for the Tribe. The application specifically states:

---

<sup>1</sup>The original amount requested was \$117,283.94. Since that time, however the Tribe has redacted 10.7 hours of attorney time from its application (10.7 x \$125 = \$1337.50; \$117,283.94 - \$1337.50 = \$115,946.40). See Tribe’s Response to IHS’s Opposition, Ex C, pp 3-4.

Appellant, Susanville Indian Rancheria..., by and through its attorney, Hobbs, Strauss, Dean & Walker, LLP, respectfully applies for an order awarding and directing the Government to pay Appellant's attorney fees... (emphasis added)

Application, p. 1 (emphasis added). The application is dated March 5, 2002. Application, p. 8.

Immediately attached to the fee application is a document signed by Ike Lowry, Chairman, which states in its entirety the following:

I hereby certify that I am an officer for the Susanville Indian Rancheria, duly authorized to sign the foregoing fee application on its behalf, and do hereby verify under penalty of perjury that the information provided in the application and all accompanying material is true and correct to the best of my knowledge and belief.

This certification is dated March 1, 2002.

An affidavit from Ike Lowry is also provided as Exhibit D to the fee application wherein Mr. Lowry states under oath the following:

I have reviewed the fee application in the above captioned action and hereby provide written verification under oath that the application and all information contained therein accompanying such application is true and complete to the best of my knowledge and belief.

The affidavit is dated March 1, 2002.

“[A]n EAJA application signed only by the applicant's attorney fails to meet the requirement of 43 CFR 4.608(f).” Tohatchi Special Education and Training Center, Inc. v. Navajo Area Director, Bureau of Indian Affairs, 26 IBIA 138, 142 (1994); See also Gregory C. Sisk, The Essentials of the Equal Access to Justice Act: Court Awards of Attorney's Fees for Unreasonable Government Conduct (Part Two), 56 La. L. Rev. 1, 101, n. 618 and accompanying text (1995) (“Under the EAJA, as under other statutory fee-shifting provisions, the fee award is made to the party – not to the attorney.”) (citations omitted). As applied to the facts of this case, I can discern no indication that Mr. Lowry, an authorized officer of the Tribe, has made a request for fees and expenses.

Mr. Lowry states that he is “duly authorized to sign the foregoing fee application,” but in point of fact, he did not sign the fee application. Similarly, his affidavit's assertion that he has “reviewed the fee application in the above captioned action and hereby provide[s] written verification under oath that the application and all information contained therein accompanying such application is true and complete” is not a signature of the fee application. He has merely made a sworn statement that he has *reviewed* the fee application. Indeed, the existence of separate statements from Mr. Lowry verifying the application serve to highlight that he did not actually sign the application; such statements would be superfluous if he had signed the

application. See 43 CFR 1.5(d) (signature on documents filed with the Department constitutes certificate). The dates on Mr. Lowry's statements, which differ from the date on the application, also serve to highlight the fact that Mr. Lowry did not sign the application.

The only person who signed the application for fees and expenses was the Tribe's attorney, Mr. Strommer. Under these circumstances, Tohatchi mandates that this forum render a decision denying the application for fees and expenses.<sup>2</sup> Accordingly, the application for fees and expenses is hereby **DENIED**.

Within 30 days of the receipt of this decision, you may file an appeal of this decision with the Secretary of Health and Human Services under 25 CFR 900.165(b). See 25 CFR 900.177. An appeal to the Secretary under 25 CFR 900.165(b) shall be filed at the following address:

Departmental Appeals Board  
U.S. Department of Health and Human Services  
Room 637-D, Humphrey Building  
200 Independence Ave., S.W.  
Washington, DC 20201.

You shall serve a copy of your notice of appeal on the official whose decision is being appealed. You shall certify to the Secretary that you have served this copy. If neither party files an appeal of this decision within 30 days, this decision will become final.

Issued at Sacramento, California, August 16, 2002.

\_\_\_\_\_  
//original signed  
William E. Hammett  
Administrative Law Judge

---

<sup>2</sup>Another Departmental case, BLM v. John L. Falen, 141 IBLA 394 (1997), suggests that defective EAJA applications "may nonetheless be considered." Falen, at 395. Because this is a case involving the ISDA, however, Tohatchi is the binding precedent on this forum. Moreover, Tohatchi is on point, while the Falen case is not specific as to the nature of the defects involved.