INTERIOR BOARD OF INDIAN APPEALS

Frank Gladue v. Eastern Nevada Tribal Social Services

6 IBIA 33 (02/07/1977)
Frank Gladue, through his attorney, Michael David Cox, Nevada Indian Legal Services, has filed an appeal from the decision of the Commissioner, Bureau of Indian Affairs, dated October 28, 1976.

The appeal, filed with this Board on January 13, 1977, must be dismissed in light of the fact that the Commissioner's decision of October 28, 1976, was in fact, a discretionary decision and final for the Department as evidenced by the Commissioner's letter of January 25, 1977, to Frances L. Wells, Nevada Indian Legal Services. Copies of the Commissioner's decision of October 28, 1976, and his letter of January 25, 1977, are attached hereto and made a part hereof.

In view of the foregoing, this Board is without jurisdiction to entertain the appeal. Accordingly, the appeal is hereby docketed by the above-cited number and disposed of.

NOW, THEREFORE, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal of Frank Gladue, be, and the same is, hereby dismissed for the reasons hereinabove set forth.

Done at Arlington, Virginia.

//original signed
Alexander R. Wilson
Chief Administrative Judge

I concur:

//original signed
Mitchell J. Sabagh
Administrative Judge

Attachments
Mr. Frank Gladue  
353 Cedar Street  
Elko, Nevada 89801  

Dear Mr. Gladue:

This replies to your appeal concerning the denial of your December 28, 1975, application for general assistance.

We have reviewed your application for general assistance and related documents. We agree with the Phoenix Area Director’s decision to deny your appeal based on the guidelines the Eastern Nevada Agency has for administering Indian social services.

In the Morton vs. Ruiz case, the United States District Court for the District of Arizona ordered, adjudged and decree:

1. That 66 IAM 3.1.4 was invalid and of no force or effect.

2. That the general assistance program of the Snyder Act, 25 U.S.C. 13, was intended to provide assistance for Indians residing “on or near” their native reservation.

3. All Indians who reside on or near their native reservation in an Indian community and who are unassimilated and maintain close economic ties with their reservation and who have filed a claim for BIA general assistance benefits after December 11, 1967, are eligible for such benefits.

Since you do not fall within the above classification, your appeal is denied.

We suggest that you contact the Elko County Department of Public Welfare, P.O. 337, Elko, Nevada 89801, and make application for assistance if your family is in need.

Sincerely yours,

//original signed
Commissioner of Indian Affairs
Dear Mr. Wells:

This refers to your January 7 letter concerning Mr. Frank Gladue.

The decision of October 28, 1976, was based upon the exercise of discretionary authority by the Commissioner of Indian Affairs and as such is final for the Department of the Interior.

Sincerely yours,

//original signed
Commissioner of Indian Affairs