



INTERIOR BOARD OF INDIAN APPEALS

Susan Totenhagen v. Minneapolis Area Director, Bureau of Indian Affairs

15 IBIA 121 (02/19/1987)

Denying reconsideration of:

15 IBIA 105

Further request for reconsideration:

15 IBIA 123

Judicial review of this case:

Reversed & remanded, *Prescott v. Hodel*, Civil No. 4-87-106 (D. Minn. July 10, 1987)

On remand:

16 IBIA 9



United States Department of the Interior

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

SUSAN TOTENHAGEN,	:	Order Denying Reconsideration
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 87-2-A
AREA DIRECTOR, MINNEAPOLIS AREA	:	
OFFICE, BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 19, 1987

On February 12, 1987, the Board of Indian Appeals (Board) issued a decision in this case, reversing the April 9, 1986, decision of the Minneapolis Area Director, Bureau of Indian Affairs. The Board held that appellant Susan Totenhagen was not validly removed from the office of Chairman of the Shakopee Mdewakanton Sioux Community (tribe) because she did not receive the notice to which she was entitled under the tribal ordinance governing the removal of tribal officials from office.

On February 17, 1987, the Board received from Leonard Prescott, Vice-Chairman of the tribe (Vice-Chairman), on his own behalf and on behalf of the tribe, a pleading entitled "Notice of Motion and Emergency Motion for Intervention, Stay and Reconsideration," a memorandum in support of the motion, and several affidavits. The Vice-Chairman states that he seeks to intervene in this matter and to submit evidence and arguments not previously submitted, which would show that the Board's decision was erroneous.

Reconsideration of appeals by the Board is governed by 43 CFR 4.315, which provides in pertinent part: "Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. * * * The petition * * * shall contain a detailed statement of the reasons why reconsideration should be granted."

Both the tribe and the Vice-Chairman have been listed as interested parties to this appeal since it was docketed by the Board on October 23, 1986. Both were mailed copies of the Board's notice of docketing, which set out the briefing schedule. As required by the Board's regulations, 43 CFR 4.311, appellant certified to the Board that she served copies of her filings on both the tribe and the Vice-Chairman. The Vice-Chairman concedes that appellant served him with documents concerning this appeal. Neither the vice-Chairman or the tribe filed any response to appellant's filings.

Although the Board's notice of docketing stated, as does 43 CFR 4.22(b), that when a party is represented by an attorney, service shall be made upon the attorney as well as the party, no entry of appearance by counsel for the tribe or the Vice-Chairman was made in this case. Accordingly, appellant's service requirements were met when she served the tribe and the Vice-Chairman.

The Vice-Chairman states that because his attorney was not aware that the appeal was pending, he should now have the opportunity to submit evidence and arguments which should have been submitted during the briefing period. Clearly, however, there can be no requirement that an attorney be served until the identity of that attorney is made known through the filing of an entry of appearance. An interested party to an appeal before the Board, who receives notice that the appeal is pending, bears the responsibility of notifying his attorney of the appeal and requesting the attorney to represent him.

The Board has consistently held that it will not consider arguments or evidence raised for the first time in a petition for reconsideration. Burns v. Anadarko Area Director, 11 IBIA 133 (1983); Crooks v. Minneapolis Area Director, 14 IBIA 271 (1986).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Vice-Chairman's petition for reconsideration is denied.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Acting Chief Administrative Judge