



INTERIOR BOARD OF INDIAN APPEALS

Margaret Hill v. Acting Assistant Secretary - Indian Affairs

17 IBIA 3 (10/17/1988)

Related Board case:  
16 IBIA 179



# United States Department of the Interior

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

MARGARET HILL,  
Appellant

v.

ACTING ASSISTANT SECRETARY--  
INDIAN AFFAIRS,  
Appellee

: Order Docketing and Dismissing  
: Appeal  
:  
:  
: Docket No. IBIA 89-2-A  
:  
:  
: October 17, 1988

On October 11, 1983, the Board of Indian Appeals received a notice of appeal from Margaret Hill, through counsel, Steven Hirsh, Esq., Oakland, California. Appellant seeks review of a September 26, 1988, decision issued by the Acting Assistant Secretary--Indian Affairs. The Acting Assistant Secretary dismissed appellant's appeal of a May 17, 1988, decision of the Acting Sacramento Area Director, Bureau of Indian Affairs (BIA), for failure to file a timely notice of appeal. <sup>1/</sup>

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter.

A copy of the Acting Assistant Secretary's September 26 decision was attached to the notice of appeal. The decision states that it is final for the Department. Decisions of the Acting Assistant Secretary are equivalent to decisions rendered by the Assistant Secretary. See Ute Mountain Ute Tribe v. Acting Assistant Secretary for Indian Affairs, 11 IBIA 168 (1983). Because the Assistant Secretary has the authority to issue decisions final for the Department, the Board does not have general review authority over such decisions, except as they are specially referred to it on a case-by-case basis or through rulemaking. See, e.g., Falcon Lake Properties v. Assistant Secretary--Indian Affairs, 15 IBIA 286 (1987); Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80, 90 I.D. 521 (1983); 25 CFR 13.15. This matter has not been so referred to the Board.

Appellant argues that the Acting Assistant Secretary's decision is appealable to the Board pursuant to 25 CFR 2.19(c)(2) because it is based on an interpretation of law rather than on the exercise of discretionary authority.

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<sup>1/</sup> By an earlier notice of appeal to the Board, received by the Board on July 13, 1988, appellant sought review of the Acting Area Director's decision. The Board dismissed the appeal as premature, noting there was no indication that appellant had filed an appeal of the Acting Area Director's decision with the Washington, D.C., office of BIA. 16 IBIA 179.

However, for the reasons discussed above, the Board lacks jurisdiction to review the decision, even if it is based on an interpretation of law. Great Lakes Indian Fish and Wildlife Commission v. Assistant Secretary--Indian Affairs, 15 IBIA 87 (1987).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Assistant Secretary's September 26, 1988, decision is dismissed.

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//original signed  
Anita Vogt  
Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge