



INTERIOR BOARD OF INDIAN APPEALS

Philip Poitra v. Aberdeen Area Director, Bureau of Indian Affairs

17 IBIA 6 (10/18/1988)



United States Department of the Interior

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

PHILIP POITRA, : Order Dismissing Appeal
Appellant :
 :
v. :
 :
 : Docket No. IBIA 87-49-A
AREA DIRECTOR, ABERDEEN AREA :
OFFICE, BUREAU OF INDIAN AFFAIRS, :
Appellee : October 18, 1988

On September 4, 1987, the Board of Indian Appeals (Board) received a motion from appellant Philip Poitra asking it to assume jurisdiction over an appeal filed with the Central Office of the Bureau of Indian Affairs (BIA) pursuant to 25 CFR 2.19. 1/ Appellant sought review of the termination of BIA general assistance payments to his wife.

By order dated September 4, 1987, the Board made a preliminary determination that it had jurisdiction over the appeal and requested the administrative record, which was received on October 26, 1987. By order dated October 27, 1987, the Board established a briefing schedule, pursuant to which appellant filed an opening brief. Appellee Aberdeen Area Director did not file an answer brief. Upon determining that a brief from appellee was essential to its consideration of this appeal, the Board requested the filing of a brief pursuant to its authority in 43 CFR 4.311(c) 2/ by order dated June 9, 1988.

On July 21, 1988, the Board received a joint motion from the parties seeking a stay of further proceedings in this matter pending the outcome of settlement negotiations. A stay was granted on July 21, 1988.

1/ Section 2.19 states in pertinent part:

"(a) within 30 days after all time for pleadings (including extension granted) has expired, the Commissioner of Indian Affairs [or Bureau of Indian Affairs official exercising the administrative review authority of the Commissioner] shall:

"(1) Render a written decision on the appeal, or

"(2) Refer the appeal to the Board of Indian Appeals for decision.

"(b) If no action is taken by the Commissioner within the 30-day time limit, the Board of Indian Appeals shall review and render the final decision."

2/ Section 311(c) states: "The Bureau of Indian Affairs shall be considered an interested party in any proceeding before the Board. The Board may request that the Bureau submit a brief in any case before the Board."

On October 13, 1988, the Board received a joint motion asking that the appeal be dismissed with prejudice.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the motion is granted and this appeal is dismissed with prejudice.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge