



INTERIOR BOARD OF INDIAN APPEALS

Tonkawa Tribe of Oklahoma v. Acting Anadarko Area Director,
Bureau of Indian Affairs

18 IBIA 370 (07/17/1990)



United States Department of the Interior

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

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| TONKAWA TRIBE OF OKLAHOMA, | : | Order Docketing and Dismissing |
| Appellant | : | Appeal |
| | : | |
| v. | : | |
| | : | Docket No. IBIA 90-112-A |
| ACTING ANADARKO AREA DIRECTOR, | : | |
| BUREAU OF INDIAN AFFAIRS, | : | |
| Appellee | : | July 17, 1990 |

On July 6, 1990, the Board of Indian Appeals (Board) received a copy of a notice of appeal filed by the Tonkawa Tribe of Oklahoma (appellant), through its Vice-President Cynthia Gould. The original notice of appeal was filed with the Acting Anadarko Area Director, Bureau of Indian Affairs (BIA; appellee). Appellant seeks review of appellee's May 11, 1990, decision declining funding of its fiscal year 1990 Core Management grant application.

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that the appeal be dismissed.

Appellee's May 11, 1990, decision letter states in part: "This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and **MUST BE FILED WITHIN 30 DAYS OF THE DATE YOU RECEIVE THIS DECISION**" (emphasis in original). The envelope in which the Board's copy of the notice of appeal was sent was postmarked June 29, 1990.

Because it appeared that the notice of appeal was not timely, the Board contacted the Anadarko Area Office to determine when appellant received the decision. The Board was informed that the return receipt card showed receipt on May 15, 1990. The Board was further informed that, on June 14, 1990, appellee had replied to appellant's letter, giving appellant an additional appeal period. The Board requested a copy of appellee's June 14, 1990, letter, which it received on July 12, 1990.

The first question that must be considered is the status of appellee's June 14, 1990, letter to appellant. In Interim Ad Hoc Committee of the Karok Tribe v. Sacramento Area Director, 13 IBIA 76, 83-85, 92 I.D. 46, 50-51 (1985), the Board held that under long established Departmental precedents, BIA lost jurisdiction over a matter once it was notified that an appeal had been filed. This rule was established to prevent the obvious confusion that would result if two offices of the Department were to exercise jurisdiction over the same matter simultaneously. Under this rule, when appellee received appellant's original notice of appeal, it lost authority to take further action in this matter, except to participate as a party to the appeal. Thus, appellee's June 14, 1990, letter was a nullity, and had no force or effect. See also Thompson v. Eastern Area Director, 17 IBIA 39 (1989); Tule River Indian Reservation v. Sacramento Area Director, 17 IBIA 21, 28 n.8 (1988).

Therefore, the Board must consider whether the notice of appeal was timely filed. 43 CFR 4.332(a) provides in part that "[a] notice of appeal not timely filed shall be dismissed for lack of jurisdiction." 43 CFR 4.334 further provides that "[r]equests for extensions of time to file documents may be granted upon a showing of good cause, except for the time fixed for filing a notice of appeal which, as specified in § 4.332 of this part, may not be extended." The Board has repeatedly held that the timely filing of a notice of appeal is jurisdictional. See, e.g., Locust v. Acting Anadarko Area Director, 18 IBIA 286 (1990), and cases cited therein; Estate of Mary May LaRose Murray, 18 IBIA 49 (1989); Jones v. Assistant Anadarko Area Director, 17 IBIA 122 (1989), and cases cited therein. Appellant was properly informed that its notice of appeal should be filed with the Board. Because the Board did not receive appellant's notice of appeal within the time period specified in the regulations, this appeal must be dismissed.

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 Anadarko Area Director's May 11, 1990, decision is dismissed for lack of jurisdiction.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge