



INTERIOR BOARD OF INDIAN APPEALS

Linda Stark; Edward Stark; and Fredrick Stark v. Acting Portland Area Director,
Bureau of Indian Affairs

20 IBIA 188 (08/15/1991)

Denying reconsideration of:
20 IBIA 121

Related Board case:
19 IBIA 293



United States Department of the Interior

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

LINDA STARK, EDWARD STARK, and FREDRICK STARK, Appellants	:	Order Denying Petition for Reconsideration
	:	
	:	
v.	:	Docket Nos. IBIA 91-19-A
	:	IBIA 91-20-A
ACTING PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	IBIA 91-21-A
	:	
	:	August 15, 1991

These are consolidated appeals from decisions of the Acting Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), denying retroactive general assistance benefits under a special program undertaken pursuant to a settlement agreement in Kalispel Tribe of Indians v. Brown, No. C-88-126-JLQ (E.D. Wash. filed Mar. 15, 1988). By decision dated July 11, 1991, the Board affirmed the Area Director's decisions. 20 IBIA 121.

On August 9, 1991, the Board received a petition for reconsideration from appellants, now represented by counsel, Jeffrey S. Schuster, Esq., Seattle, Washington. ^{1/} Appellants contend for the first time that their general assistance applications must be deemed approved. They argue that their applications were complete when filed because their verifications of Indian status were enclosed with the application of another applicant, Sheila Stark. Therefore, they contend, BIA's denials of their applications were not issued until more than 90 days after its receipt of their completed applications, thereby triggering the "automatic approval" provision of the settlement agreement.

43 CFR 4.315(a) provides: "Reconsideration of a Board decision will be granted only in extraordinary circumstances." The Board has stated on several occasions that it will not consider arguments raised for the first time in a petition for reconsideration. E.g., New Mexico Highway & Transportation Dept. v. Albuquerque Area Director, 18 IBIA 232 (1990); Crooks v. Minneapolis Area Director, 14 IBIA 271 (1986). Even if the Board were to consider appellants' new argument, however, it would not alter its original conclusion.

^{1/} On June 14, 1991, two months after appellants' reply brief was due, and while this case was under active consideration, the Board received a request for a stay of proceedings from Mr. Schuster, who stated that a stay was needed so that Evergreen Legal Services could determine whether to represent appellants and, if an affirmative determination was made, file an out-of-time reply brief. The Board denied the request. Under 43 CFR 4.310(d)(2), "[a] request to the Board for an extension of time must be filed within the time originally allowed for filing."

The Board's July 11 decision addressed the timeliness of BIA's denials of appellants' applications, even though appellants had not raised the issue. The Board held that the BIA decisions were timely, finding that appellants' applications were incomplete when filed and did not become complete until their verifications of Indian status were received by BIA, following BIA's notice to them that their applications were deficient. Appellants now contend that they should not have been required to submit verifications with their applications because their verifications were included with Sheila Stark's application. Assuming arguendo that Sheila's application included the verifications, 2/ appellants' argument would still not be persuasive. Each applicant was required to submit verification for him or herself as well as all individuals for whom he/she was claiming benefits. This requirement was clearly stated on the application form. Arguably, appellants could have met the verification requirement by stating in their applications that their verifications were included with Sheila's application. However, the record copies of appellants' applications do not include any such statements, and appellants do not now contend that they made such statements.

The retroactive general assistance program was a large scale program conducted during a limited period of time. It is simply not reasonable to conclude, as appellants' argument would require, that BIA should have searched for appellants' verifications in the applications of other applicants, when there was nothing in appellants' applications to alert BIA that such verifications even existed, let alone to inform BIA where they might be found.

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

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

2/ On petition for reconsideration, appellants submit a copy of Sheila's application, together with a copy of a "Verification of Tribal Enrollment," which lists appellants as well as Sheila and one other individual. However, the copy of Sheila's application submitted by her own attorney in earlier proceedings, and still in the record for this appeal, does not include a copy of the verification document. Sheila's appeal was dismissed following settlement. See 19 IBIA 293.