



INTERIOR BOARD OF INDIAN APPEALS

S.A.K. Construction v. Billings Area Director, Bureau of Indian Affairs

25 IBIA 226 (03/08/1994)



# United States Department of the Interior

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

S.A.K. CONSTRUCTION, : Order Affirming Decision  
Appellant :  
 :  
v. :  
 :  
 : Docket No. IBIA 94-23-A  
BILLINGS AREA DIRECTOR, :  
BUREAU OF INDIAN AFFAIRS, :  
Appellee : March 9, 1994

Appellant S.A.K. Construction sought review of an October 20, 1993, decision of the Billings Area Director, Bureau of Indian Affairs, withdrawing certification of appellant as an Indian-owned business under the Buy Indian Act, 25 U.S.C. § 47 (1988). Appellant's notice of appeal states in its entirety:

My name is Kirby Kenney, I represent Sherri Ann Kenney, owner of SAK Construction, in this appeal. Sherri Ann Kenney notifies this board that she is appealing BIA, Area Director decision dated October 22 [sic], 1993 (copy attached).

As instructed in that decision, Sherri Ann Kenney certifies that she has mailed copies of this notice to the following parties: Assistant Secretary - Indian Affairs, 4140 MIB, U.S. Department of the Interior, 18th and C Street, NW. Washington, D.C. 20240 and BIA, Billings Area Office, Area Director, 316 North 26th Street, Billings, Mt. 58101. The October 22, 1993, decision instructs Sherri Ann Kenney that ". . . the [Board of Indian Appeals] will notify you of further appeal procedures". SAK is now awaiting those instructions. [Omission in original.]

In its December 21, 1993, notice of docketing, the Board advised appellant of its right to file an opening brief. The Board also advised appellant that it bore the burden of proving error in the Area Director's decision. The return receipt card shows that Sherri Kenney received the notice of docketing on January 3, 1994. Appellant did not file a brief.

As appellant was advised, in appeals arising under 25 CFR Part 2, as this appeal does, the appellant bears the burden of proving that the agency decision complained of was erroneous or not supported by substantial evidence. *See, e.g., Littleman v. Anadarko Area Director*, 24 IBIA 129 (1993), and cases cited therein. In the present case, the notice of appeal does not set forth any grounds for the appeal, and appellant did not file a brief

indicating those grounds. Because it has not given any reasons for the appeal, or attempted to show the error in the Area Director's decision, appellant has not sustained its burden of proof.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Billings Area Director's October 20, 1993, decision is affirmed.

//original signed

Kathryn A. Lynn  
Chief Administrative Judge

//original signed

Anita Vogt  
Administrative Judge