



INTERIOR BOARD OF INDIAN APPEALS

Karen Spears v. Sacramento Area Director, Bureau of Indian Affairs

27 IBIA 93 (12/10/1994)

Related Board cases:

28 IBIA 161

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# United States Department of the Interior

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

KAREN SPEARS,  Appellant	:	Order Docketing, Dismissing, and Referring Appeal to the Assistant Secretary - Indian Affairs
	:	
v.	:	
	:	Docket No. IBIA 95-55-A
SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	December 20, 1994

On December 19, 1994, the Board of Indian Appeals received a notice of appeal from Karen Spears, through counsel, Margaret Crow Rosenfeld, Esq., Oakland, California. Appellant seeks review of a November 23, 1994, decision of the Sacramento Area Director, Bureau of Indian Affairs (Area Director), concerning attorney fees under the Indian Child Welfare Act.

The Area Director's decision described appellant's request as one for payment of attorney fees, denied the request, and advised appellant that she could appeal the decision to the Board. From the materials included with the notice of appeal, however, it is apparent that appellant's request to the Area Director was actually a request for certification of eligibility for payment of attorney fees pursuant to 25 CFR 23.13(a)-(c), rather than a request for payment of attorney fees pursuant to 25 CFR 23.13(d)-(f).

Under the regulation, an Area Director's decision concerning eligibility for payment of attorney fees is appealable to the Assistant Secretary - Indian Affairs (25 CFR 23.13(c)), and an Area Director's decision concerning the amount of payment is appealable to the Board (25 CFR 23.13(f)). In filing her notice of appeal with the Board, appellant followed the instructions given in the Area Director's decision. However, under 25 CFR 23.13(c), this matter should be before the Assistant Secretary.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed, dismissed, and transferred to the Assistant Secretary - Indian Affairs. 1/

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//original signed  
Anita Vogt  
Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

1/ 25 CFR 23.13(c) provides that the Assistant Secretary's consideration of the appeal shall be in accordance with 25 CFR 2.20(c) through (e). This means, *inter alia*, that if the Assistant Secretary fails to make a decision within 60 days after the time for all pleadings has expired, appellant may request the Board to assume jurisdiction over the appeal.