



INTERIOR BOARD OF INDIAN APPEALS

Elmer Capoeman v. Portland Area Director, Bureau of Indian Affairs

30 IBIA 234 (03/19/1997)

Denying reconsideration of:
30 IBIA 226



United States Department of the Interior

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

ELMER CAPOEMAN,	:	Order Denying Petition for
Appellant	:	Reconsideration
	:	
v.	:	
	:	Docket No. IBIA 97-99-A
PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 19, 1997

Appellant Elmer Capoeman has petitioned for reconsideration of an order issued by the Board of Indian Appeals (Board) on March 5, 1997. 30 IBIA 226. The case involves a hold placed on appellant's Individual Indian Money account to recoup \$1,448.04 which was erroneously paid into that account. The appeal was dismissed for failure to file a timely notice of appeal.

Appellant contends that he should not be held to the 30-day limit for filing a notice of appeal set forth in 43 C.F.R. § 4.332(a) because whenever he tries to get something done by the Bureau of Indian Affairs, it is done only on work days. He contends that the Area Director's decision was unclear as to whether 30 calendar days or 30 working days was meant.

The decision which Appellant received specifically referred him to the regulations in 43 C.F.R. § 4.310-4.340, which govern appeals to the Board. Section 4.310(c) provides rules for computing time periods for filing and serving documents during appeals to the Board. The section states: "When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays, and other non-business days shall be excluded in the computation." Thus, when the time prescribed or allowed is more than 7 days, intermediate Saturdays, Sundays, Federal legal holidays, and other non-business days are included in the computation.

If Appellant had a question as to whether "30 days" in the Area Director's decision meant calendar days or working days, he could have inquired either of BIA or the Board, or he could have requested a copy of the Board's regulations to read himself. Instead, he apparently acted upon an assumption that 30 working days was meant. It was Appellant's responsibility at least to inquire about a point that seemed unclear to him.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. 4.1, appellant's petition for reconsideration is denied.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge