



INTERIOR BOARD OF INDIAN APPEALS

Julie Kerwin v. Portland Area Director, Bureau of Indian Affairs

31 IBIA 276 (11/25/1997)

Judicial review of these cases:

Oral ruling for government, *Miller v. Bureau of Indian Affairs*, Case No. C98-330Z
(W.D. Wash. Mar. 24, 1999)

Related Board cases:

23 IBIA 114

28 IBIA 72

Reconsideration denied, 34 IBIA 16

31 IBIA 7

31 IBIA 273

31 IBIA 279

31 IBIA 282

31 IBIA 285

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31 IBIA 295

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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JULIE KERWIN,	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 97-36-A
PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	November 25, 1997

Appellant Julie Kerwin joined in an appeal from an August 26, 1996, decision issued by the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA). In general, the Area Director's decision adjusted rental rates for residential/recreational leases along Pull and Be Damned Road on the Swinomish Indian Reservation.

With regard to Appellant, the August 26, 1996, decision states at pages 2-3:

Three of the 22 original appellants, * * * [including present Appellant and the appellants in Johns v. Portland Area Director, 31 IBIA 279 (1997), and Dentel v. Portland Area Director, 31 IBIA 282 (1997)], failed to post a bond as required, and we dismissed their appeals. These dismissal actions were not appealed to the [Board] within the requisite time frame and are, therefore, final for the Department. In your Statement of Reasons you indicate that these * * * appellants request that " * * * the Portland Area Director reconsider the * * * prior decisions and consider them with the remainder of the present appeals." Since these individuals did not comply with the bonding requirements as agreed upon, and did not appeal the bonding decisions, we will not consider their appeals now.

By order dated October 9, 1996, the Board requested a copy of the Area Director's earlier dismissal. The Area Director furnished a letter dated September 19, 1995, dismissing Appellant's appeal from a decision of the Superintendent, Puget Sound Agency, BIA (Superintendent), adjusting Appellant's rent. The reason for dismissal was Appellant's failure to post a bond. In the alternative, the Area Director upheld the Superintendent's rental adjustment decision. The letter informed Appellant of her right to appeal the decision to the Board and stated that "[i]f no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal." Sept. 19, 1995, Letter at 6.

Appellant failed to appeal from this decision.

On November 4, 1996, the Board received a filing in Johns, supra, in response to an order which the Board issued on October 9, 1996. That filing also relates to Appellant here. It states at page 2:

19 of the 22 [lessees seeking to appeal] were able to post the bonds, however, three appellants were not able to do so * * *.

* * * * *

We requested that because of the financial hardship they were suffering, that the * * * Area Director waive the requirement of an additional bond with respect to these * * * tenants. The * * * Area Director refused. The * * * Area Director issued an order dismissing those * * * appeals for failure to post a bond. While this order was appealable, if they did not have the money to post a bond, where were they to get the money to pursue an appeal independently.

In an order dated December 12, 1996, the Board noted that the Area Director's September 19, 1995, dismissal properly informed Appellant that she had the right to appeal to the Board and that failure to appeal would result in the dismissal decision being final for the Department. The Board stated at page 2 of that order:

At this time, cost is the only explanation arguably stating why appellant failed to appeal. Because there are no fees for filing an appeal with the Board, the Board assumes that "the money to pursue an appeal independently" refers to attorney fees. There is no requirement that parties before the Board be represented by counsel. In fact, many parties appear quite successfully before the Board pro se. The filing of a notice of appeal stating appellant's objections to the dismissal of her appeal would have cost appellant approximately 32 cents. However, appellant apparently failed to take any steps to preserve her rights.

The Board gave Appellant an opportunity to show cause why her appeal from the Area Director's August 26, 1996, decision should not be dismissed.

Appellant responded at page 18 of the Opening Brief filed in Elliott v. Portland Area Director, 31 IBIA 287 (1997):

The three appellants had requested that the bond requirement be waived because the excessive rent increases were causing them hardship. * * * The appellants acknowledge that they could have appealed without the assistance of counsel, but it is not just an issue of counsel. To the best of appellants knowledge, no appeals have been successful unless they were prepared by counsel and supported by professional opinions such as appraisers. The deference given to the agency is just too great to overcome without spending very significant sums on professional assistance. This can amount to thousands of dollars.

The decision from which Appellant failed to appeal was the dismissal of her appeal to the Area Director for failure to post a bond. No special

professional assistance is needed for an appellant to inform the Board of the reasons she believes she should not be required to post a bond. Even assuming that Appellant thought she would have to argue the entire case at that time, she still has not shown why her failure to file an appeal should be forgiven.

Appellant's appeal from the Area Director's August 26, 1996, decision can only be viewed as an attempt to file an untimely appeal from the Area Director's September 19, 1995, decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Portland Area Director's August 26, 1996, decision is dismissed as an attempt to file an untimely appeal from the Area Director's September 19, 1995, decision.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge