



INTERIOR BOARD OF INDIAN APPEALS

Levi Bobb v. Portland Area Director, Bureau of Indian Affairs

34 IBIA 265 (03/13/2000)



United States Department of the Interior

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

LEVI BOBB,
Appellant
v.
PORTLAND AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Affirming Decision
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: Docket No. IBIA 99-41-A
:
:
: March 13, 2000

Appellant Levi Bobb seeks review of a December 17, 1998, decision of the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), that terminated Appellant for 60 days from BIA's general assistance program. ^{1/} For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

From the materials before the Board, it appears that Appellant first applied for and began receiving BIA general assistance in February 1998. In order to remain eligible for the general assistance program, Appellant was required, among other things, to turn in job search forms showing that he had made three contacts looking for work. These forms were due twice each month. As relevant to this appeal, Appellant was required to turn in a job search form before 5:00 pm on Friday, September 11, 1998. Appellant states that he turned this form in on time; his BIA caseworker states that she did not receive Appellant's form until Monday, September 14, 1998.

The caseworker prepared a letter to Appellant dated September 11, 1998. The letter stated:

This is your 20-day termination notice effective 9/30/98, because you failed to turn in the required job search which were due on 9/11/98. You are being suspended for 60-days effective 9/30/98 to 11/30/98. Should you decide to comply with the job search, your suspension could be reduced to 30 days. You may re-apply on 12/01/98.

^{1/} Appellant's actual termination was reduced to 30 days as discussed below.

Appellant alleges that he first saw the caseworker's September 11 letter on October 24, 1998, when, after making several inquiries as to why he had not received a general assistance check, he received a letter dated October 22, 1998, from the caseworker. The October 22 letter informed Appellant that he had been terminated from general assistance for 60 days. A copy of the September 11 letter was attached. Appellant objected to his termination and requested a hearing. A hearing was denied on the grounds that the request was not timely. The Area Director upheld Appellant's termination on December 17, 1998. This appeal followed.

On appeal, Appellant contends that the caseworker has not proved that he did not turn in his job search form on September 11, 1998. Appellant misconstrues the burden of proof on this issue. As an applicant for BIA assistance, Appellant was responsible for complying with all of the requirements of the program under which he was applying. It was therefore his responsibility to prove that he did turn in the form on September 11, 1998, not BIA's responsibility to prove that he did not. The Board will therefore examine the evidence which Appellant has submitted as proof that he turned in his job search form on September 11, 1998.

Appellant states that he timely turned in his job search form. At page 3 of his notice of appeal to the Board, Appellant asserts that, when he turned in the form, the caseworker "was in her office, saw me, and even nodded her head when I placed my job search on her desk."

On October 29, 1998, Reggie White Elk wrote to the caseworker in support of Appellant's assertion that he timely submitted his job search form. That letter states: "This letter is to confirm the date of 9-11-98 when both [Appellant] and myself completing and submitting the job search form. As I had taken them into your office and leaving them on your desk or that of your secretary."

Mr. White Elk's statement is not consistent with Appellant's. Appellant stated that he put his own job search form on the caseworker's desk and that the caseworker was in the office when he did so. Mr. White Elk indicates that he put both his own and Appellant's forms on someone's desk. These inconsistencies are sufficient to cause the Board to reject Mr. White Elk's letter as corroboration of Appellant's statement.

Appellant indicated to both the Area Director and the Board that he could provide a statement from a second individual. However, he has not submitted any additional statement.

The Board finds that Appellant has not carried his burden of showing that he submitted a job search form on September 11, 1998.

Appellant contends that the caseworker "did not write/compose/author her form letter dated Sept. 11, 1998, * * * ON the day of Friday Sept. 11, 1998. It is impractical and illegal if she did." Notice of Appeal to the Area Director at 1.

The Area Director stated in his decision that the caseworker routinely stays in the office after the normal closing hours on the days when job search forms are due, and immediately prepares notification letters for those general assistance recipients who do not turn in the forms. He indicated that the caseworker does this in order to have the letters at the post office before 7:00 pm, the time she was told by the postmaster that letters must be in the post office in order to be delivered the next day.

Appellant's only challenge to the Area Director's statement of the caseworker's routine is a statement that the caseworker was out of the office for a period of time in January 1998. (It appears that Appellant meant to say January 1999.) The fact that the caseworker was out of the office in January 1999 does not show that she was not in the office the evening of September 11, 1998, or that her routine was not as described by the Area Director. Appellant has not attempted to show how it was "impractical or illegal" for the caseworker to prepare notification letters on the same day as the job search forms were due. Therefore, the Board rejects this argument.

Appellant contends that the caseworker cannot prove that she mailed the notification letter to him on September 11, 1998. Appellant asserts that he first saw the September 11 letter on October 24, 1993, and suggests that the letter might actually have been written after September 11 and back-dated.

The September 11 letter was not sent by certified mail, or by some other method which generated a receipt. However, the following statement appears in the caseworker's narratives in regard to Appellant:

9/11/98

[Appellant] failed to provided [sic] job search by due date on 9/11/98. Therefore, a 20 day termination notice was sent to [Appellant], effective 9/30/98. His last check will be \$ * * * . He is suspended for 60 days, effective 9/30/98, to 11/30/98. Should he decide to continue to do job searches his suspension could be reduced to 30 days. [Appellant] may re-apply on 12/01/98.

This statement appears on the bottom half of a page of notes. Above the statement are two other notations dated July 28 and September 3, 1998. Below the statement is another notation dated September 25, 1998. Notations on the next page, dated October 1 and 22, 1998, each refer to the notification letter sent to Appellant on September 11.

Based on these narratives, the Board concludes that there is corroboration of the caseworker's statement that she mailed the notification letter to Appellant on September 11, 1998.

In further support of his suggestion that the September 11 letter was either not written or not mailed on September 11, 1998, Appellant argues that he could not have been terminated as of September 30, 1998, because the caseworker sent him a letter dated October 1, 1998, which told him that he was required to attend a particular job interview in order to remain eligible for general assistance.

The caseworker's narrative for October 1, 1998, states in pertinent part: "[Appellant] was sent 20 day termination notice (ltr dated 9/11/98), effective 9/30/98. I sent the [October 1 letter] of notification because I thought he might be interested since he was one of the [persons able] to work even though he was terminated or suspended."

The October 1 letter appears to be a form letter. Although it might have been preferable for the caseworker to have sent Appellant a separate letter which more accurately showed his situation, the Board does not find that the caseworker's failure to do so constituted an admission that Appellant had not been terminated, or supports Appellant's assertion that the September 11 letter was not written and/or not mailed on September 11, 1998.

The Board therefore concludes that the September 11 letter was written and mailed on September 11, 1998.

Appellant objects to the following statement in the September 11 letter: "Should you decide to comply with the job search, your suspension could be reduced to 30 days." Appellant states that he had always complied with the job search requirements.

The statement tracks 25 C.F.R. § 20.21 (i) (4) (ii), which provides: "An unemployed individual against whom a 60-day eligibility suspension has been levied will have the suspension period reduced by 30 days upon providing evidence that he/she has made effort to seek employment." Appellant appears not to understand that each period for which he is required to submit job search forms stands by itself. The fact that Appellant had previously submitted job search forms on time does not erase the fact that he has failed to prove that the form due on September 11 was submitted timely. However, the fact that Appellant submitted forms after September 11 allowed the reduction of his termination from 60 days to 30 days pursuant to 25 C.F.R. § 20.21 (i) (4) (ii).

Appellant relates a situation from May 1998 when he and Mr. White Elk were at a location from which they could not get to the caseworker's office in time to turn in their job search forms before 5:00 pm. He states that Mr. White Elk called the caseworker and explained the situation; and that the caseworker told them to bring the forms in on the following Monday.

Appellant prefaces this story with a citation to a note on the job search forms. The note states: "If you are on a regular monthly grant, Job Contracts [sic, probably should be Contacts] must be turned in the 2nd and 4th Friday of the month, otherwise you may be terminated." He follows the story with the question: "So, is [the caseworker] the only person who decides who MAY be terminated?" Notice of Appeal to the Area Director at 3.

Appellant's argument is not clear. The caseworker makes the initial determination that a general assistance recipient has failed to meet one or more of the program requirements, and notifies the recipient of that determination. However, the recipient has the right to appeal the caseworker's determination, as Appellant has done here. Therefore, the caseworker is not the only person who is involved in the decisionmaking process, if the recipient exercises his/her right to appeal.

Appellant perhaps reads this note to mean that termination when job search forms are not submitted is discretionary. The Board reads it to mean that BIA is authorized to terminate a recipient who fails to turn in the job search forms. The Board finds nothing in this argument that indicates the Area Director's decision should be reversed.

Appellant objects that he was terminated for 60 days beginning on September 30, 1998, even though he turned in a job search form for the last half of September 1998. Although Appellant's argument again is not clear, he appears to be arguing that he did not receive general assistance for the last half of September 1998.

Appellant has presented no evidence that his termination began prior to September 30, 1998. The Board therefore rejects this argument.

Appellant argues that he was not given 20 days notice of his termination. 25 C.F.R. § 20.13 requires that written notice of proposed decisions be given to all applicants or recipients. Subsection (b) states: "If the action is to reduce, suspend, or terminate financial assistance to the recipient, the written notice shall be provided to the recipient 20 days in advance of the proposed effective date." (Emphasis added.)

Appellant bases his argument on the fact that the notification letter was dated September 11, 1998, and he was terminated as of September 30, 1998. He contends that, because he could not have received the notification letter until September 12, 1998, he did not receive 20 days notice of the decision. Appellant suggests that, in order to be terminated as of September 30, 1998, the notification letter should have been written on September 10, 1998. In making this argument, Appellant appears to believe that he is "provided" notice of the decision when he receives the notification letter.

BIA has not explained its method of determining when the 20-day time period begins. However, its apparent conclusion is that Appellant was “provided” notice of his termination as of September 11, 1998, the date that the notification letter was written and/or mailed.

The Board has not previously addressed the calculation of time periods under 25 C.F.R. § 20.13(b). It finds nothing in that section which states how the time period is to be calculated. ^{2/} However, it concludes that, even if BIA erred as to the first day of the 20-day period under 25 C.F.R. § 20.13(b), that error is harmless under the circumstances of this case, because the 20-day period had passed before the appeal process was initiated, and therefore did not have any real impact in this case. Appellant was terminated for 30 days, regardless of the beginning and ending dates of that termination period. The Board finds no reversible error arising from the fact that the notification letter was dated September 11, 1998, and Appellant’s termination began on September 30, 1998.

Appellant contends that the September 11 letter did not advise him of his appeal rights. 25 C.F.R. § 20.13 requires that notification letters “clearly and completely advise [applicants and/or recipients] of their legal rights to contest any adverse proposed decision.”

BIA has indicated that each notification letter has the appeal information on the reverse side. Unfortunately, none of the copies of the September 11 letter in the administrative record show that anything was written on the reverse side. Therefore, the Board cannot determine whether Appellant was given his appeal rights with the September 11 letter.

However, the administrative record contains a “General Assistance Case Plan” for Appellant, which, among other things, includes a statement of his appeal rights. Appellant signed this statement on March 23, 1998, and November 17, 1998.

The Board concludes that, under the circumstances of this case, in which Appellant actually exercised his appeal rights, the possible failure to provide those appeal rights with the September 11 letter is, again, harmless error.

Appellant questions the redetermination of his eligibility for BIA general assistance after the end of his termination period. This redetermination is not before the Board, as it was not part of the Area Director’s December 17, 1998, decision. Therefore, the Board does not address these arguments.

^{2/} But see 25 C.F.R. § 20.30(a), providing that a request for hearing concerning a proposed decision under § 20.13 must be made “within 20 days after the date of mailing or delivery of the written notice.” (Emphasis added.)

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Portland Area Director's December 17, 1998, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge