



INTERIOR BOARD OF INDIAN APPEALS

Shoshone-Bannock Tribal Credit Program v. Portland Area Director,
Bureau of Indian Affairs

35 IBIA 159 (08/23/2000)

Denying reconsideration of:
35 IBIA 110



United States Department of the Interior

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

SHOSHONE-BANNOCK TRIBAL CREDIT PROGRAM,	:	Order Denying Reconsideration
Appellant	:	
	:	
v.	:	Docket No. IBIA 00-1-A
	:	
PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 23, 2000

On July 14, 2000, the Board modified and affirmed a decision of the Portland Area Director, Bureau of Indian Affairs, which removed a hold on the Individual Indian Money account of Leo Cerino. 35 IBIA 110. Appellant Shoshone-Bannock Tribal Credit Program has filed a petition for reconsideration, contending that the Board should not have considered issues, in particular due process issues, which Appellant did not raise in its appeal.

Appellant argues:

Since due process was a non-issue on appeal the Area Director's brief raising the issue was not in accordance with issues on appeal. * * * The Board's deference to non issues raised by the Area Director's counsel to the demise of issues raised by the parties, is not reflective of the standard of fairness and impartiality that the parties anticipated would be afforded on appeal.

Appellant's Motion to Reconsider at 2.

Contrary to Appellant's suggestion that due process issues were not raised by any party to this appeal, both Cerino and the Area Director, two of the three parties, raised due process issues.

Even had those issues not been raised by any party, the Board could have considered them on its own motion (and likely would have done so, given the record in this case). 43 C.F.R. § 4.318 provides: "[E]xcept as specifically limited in this part or in Title 25 of the Code of Federal Regulations, the Board shall not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate."

A manifest injustice to Cerino was apparent from the record in this case and was, moreover, admitted by the Area Director. Under these circumstances, a remand for "further fact-finding by the BIA on the issue of due process," as Appellant suggests, id., would be entirely inappropriate and wasteful.

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
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge