



INTERIOR BOARD OF INDIAN APPEALS

Aleutian Pribilof Islands Association v. Northwest Representative, Office of Self-Governance, Bureau of Indian Affairs

44 IBIA 11 (11/03/2006)

Related Indian Self-Determination Act case:

Administrative Law Judge Recommended Decision, 08/31/2006



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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<p>ALEUTIAN PRIBILOF ISLANDS ASSOCIATION, Appellant,</p> <p>v.</p> <p>NORTHWEST REPRESENTATIVE, OFFICE OF SELF-GOVERNANCE, BUREAU OF INDIAN AFFAIRS, Appellee.</p>	<p>: Order Dismissing Objection to Recommended Decision</p> <p>:</p> <p>:</p> <p>:</p> <p>: Docket No. IBIA 06-50-A</p> <p>:</p> <p>:</p> <p>: November 3, 2006</p>
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The Aleutian Pribilof Islands Association (APIA) seeks review of an August 31, 2006 Recommended Decision (Recommended Decision) issued by Administrative Law Judge (ALJ) Harvey C. Sweitzer, in this appeal brought under the Indian Self-Determination and Education Assistance Act (ISDA), 25 U.S.C. §§ 450 et seq. The Recommended Decision upheld a decision by the Bureau of Indian Affairs (BIA) to reject APIA's proposal to include funding in a fiscal year (FY) 2006 Tribal Self-Governance Annual Funding Agreement for APIA to perform activities under Section 14(h)(1) of the Alaska Native Claims Settlement Act (ANCSA). ^{1/} On November 1, 2006, the Board of Indian Appeals (Board) received from APIA a Notice of Appeal and Objection (Objection) to the Recommended Decision. For the reasons discussed below, the Board dismisses APIA's Objection as untimely.

^{1/} Section 14(h)(1) of ANCSA, as amended, 43 U.S.C. § 1613(h)(1), authorizes the Secretary to withdraw and convey to Alaska Native Regional Corporations fee title to cemetery sites and historical places. The criteria for evaluating applications for conveyances are promulgated at 43 C.F.R. § 2653.5.

APIA previously had received funding for ANCSA section 14(h)(1) activities in its Compact with BIA under Title IV of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 458aa et seq. BIA rejected APIA's FY 2006 proposed funding on the grounds that the requested funds should instead be transferred to the Aleutian (Regional) Corporation. See Recommended Decision at 1. The facts of this case are set forth in detail in Judge Sweitzer's Recommended Decision.

On March 16, 2006, APIA filed an appeal to the Board, pursuant to 25 C.F.R. §§ 900.158 and 1000.432(a), from BIA's decision to reject its funding proposal for ANCSA section 14(h)(1) activities. On March 27, 2006, the Board referred APIA's appeal to the Hearings Division of the Office of Hearings and Appeals for assignment to an ALJ, as provided in 25 C.F.R. § 900.161(a).

On August 31, 2006, Judge Sweitzer issued a Recommended Decision to affirm BIA's rejection of APIA's request for funding for ANCSA Section 14(h)(1) activities. The Recommended Decision included correct appeal instructions for filing an objection with the Board, including the requirement to file any objection within 30 days from receipt of the Recommended Decision.

On October 31, 2006, APIA contacted the Board to determine the status of Board action on its Objection, and was advised that the Board had not received the Objection.

On November 1, 2006, the Board received from APIA a copy of its Objection. By cover letter to the Board dated October 31, 2006, counsel for APIA explains that its Objection is dated September 29, 2006 (within the 30-day time frame for filing an appeal) and that the Objection was served on interested parties, "but it appears that due to a clerical error we inadvertently failed to mail the original to the Board." Oct. 31, 2006 Letter from Strommer to Board. APIA apologizes for its oversight (which is further explained in an accompanying affidavit), contends that none of the parties has been prejudiced because each was timely served with the Objection, and requests that the Board accept the Objection as timely filed under 25 C.F.R. § 900.165(c).

Sections 900.165 and 900.166 of 25 C.F.R. set out the procedures for filing objections to an ALJ's recommended decision in an ISDA appeal. Subsection 900.165(c) provides language that must be included in an ALJ's recommended decision in an appeal involving the Department of the Interior, advising parties of their right of appeal by filing an objection with the Board. Section 900.166 provides that a party may file an objection to a recommended decision within 30 days from receipt of the recommended decision. In relevant part, section 900.166 further provides:

The recommended decision shall become final 30 days after the Indian tribe or tribal organization receives the ALJ's recommended decision, unless a written statement of objections is filed with * * * the [Board] during the 30-

day period. If no party files a written statement of objections within 30 days, the recommended decision shall become final. 2/

In the present case, APIA does not contend that its Objection was timely filed with the Board. 3/ Instead, APIA explains the lack of timeliness as due to an oversight and requests that the Board accept the Objection as timely.

We conclude that the ISDA regulations do not allow the Board to accept and to consider untimely objections to an ALJ's recommended decision. Section 900.166 states that if no objection is filed within the time allowed, the recommended decision becomes "final." Section 900.167 authorizes the Board to modify, adopt, or reverse a recommended decision within 20 days from the date it receives "timely" written objections. Neither of these sections, nor any other provision in the ISDA regulations, gives the Board authority to excuse a party's failure to file a timely objection from an ALJ's recommended decision or to review such a decision after it has become final.

Our conclusion is strengthened by the fact for filing an initial ISDA appeal to the Board from an agency decision, the regulations expressly do allow the Board to grant an extension of time, if a tribe or tribal organization has a valid reason for not filing within the 30-day time period. See 25 C.F.R. § 900.159. No similar authority is granted to the Board with respect to filing an objection from an ALJ's recommended decision. Had the drafters of the regulations intended to allow the Board to excuse untimely objections, they could have done so.

When no timely objection was filed to Judge Sweitzer's Recommended Decision, it became final and the Board now lacks authority to accept or to consider APIA's Objection. 4/

2/ Objections in appeals involving the Department of Health and Human Services (HHS) are filed with the Secretary of HHS. Id.

3/ The record indicates that APIA received the Recommended Decision on September 5, 2006.

4/ For purposes of this order, we accept APIA's assertion and supporting evidence that its Objection was served on interested parties on or about September 29, 2006. Proper service, however, even if it occurs within 30 days from a party's receipt of a recommended decision, is not effective as proper and timely "filing" with the Board.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1 and 25 C.F.R. § 900.167, the Board dismisses APIA's Objection as untimely.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge