



## INTERIOR BOARD OF INDIAN APPEALS

Pascua Yaqui Tribe v. Acting Director, Tucson Area Office, Indian Health Service

45 IBIA 55 (06/01/2007)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

PASCUA YAQUI TRIBE,	)	Order Denying Request for Extension
Appellant,	)	and Dismissing Appeal
	)	
v.	)	
	)	
ACTING DIRECTOR, TUCSON	)	Docket No. IBIA 07-104-A
AREA OFFICE, INDIAN HEALTH	)	
SERVICE,	)	
Appellee.	)	June 1, 2007

On May 29, 2007, the Board of Indian Appeals (Board) received a Motion to Extend Time to Appeal and a Notice of Appeal from the Pascua Yaqui Tribe (Tribe). The Tribe seeks an extension of time under the Indian Self-Determination Act (ISDA) regulations, 25 C.F.R. § 900.159, in which to file an appeal from a partial declination of the Tribe's ISDA contract for health care services. The partial declination decision was issued in a letter dated March 26, 2007, by the Acting Director, Tucson Area Office, Indian Health Service (IHS).

The Tribe's notice of appeal was filed on May 25, 2007, which is beyond the 30-day period specified in 25 C.F.R. § 900.158(a) for filing an ISDA appeal. If a tribe has a valid reason, subsection 900.159 authorizes the Board, in its discretion, to grant an extension for filing an ISDA appeal. The Board has construed the regulation to require that a tribe must show that there were extenuating circumstances that prevented it from filing a timely notice of appeal. We deny the Tribe's request for an extension of time in which to file its appeal because the Tribe has not shown that it was prevented from filing a timely notice of appeal. We therefore dismiss the Tribe's appeal as untimely.

Subsection 900.158(a) of 25 C.F.R. provides that if a tribe decides to appeal from a decision that falls within the scope of section 900.150 (which includes declination decisions) it "shall" file a notice of appeal with the Board within 30 days of receiving the

decision.<sup>1</sup> Subsection 900.159, however, allows tribes to request an extension of time for filing an appeal if the tribe files its request within 60 days of receiving the initial decision (or the recommended decision after an informal conference).<sup>2</sup> The request must give a reason for not filing the appeal within the 30-day time period. 25 C.F.R. § 900.159. If the tribe has a “valid reason” for not filing its appeal on time, the Board may grant an extension. *Id.*

In *Seminole Nation of Oklahoma v. Acting Eastern Oklahoma Regional Director*, 37 IBIA 154 (2002), the Board construed subsection 900.159. The Board reviewed the preamble language accompanying the final rule, which indicated that the rulemaking committee did not intend to authorize routine extensions of time, but that extenuating circumstances might “prevent” a tribe from filing a timely appeal. *See id.* at 155; 61 Fed. Reg. 32,482, 32,497 (June 24, 1996). The Board concluded that “in order to establish a valid reason for not filing a timely notice of appeal, a tribe must show that extenuating circumstances prevented it from doing so. . . . [I]t must show that it was actually precluded from filing a timely notice of appeal.” *Seminole Nation*, 37 IBIA at 155. In *Seminole Nation*, the Board denied the tribe’s request for an extension, which was based on having other matters in litigation, tribal hearings, and insufficient time to review and make a decision whether to file an appeal. *Id.* at 154-55. In *Wasson v. Acting Western Regional Director*, 39 IBIA 174, 176-79 (2003), the Board reiterated its holding in *Seminole Nation* and denied a request for an extension for filing an ISDA appeal.

In the present case, the Tribe contends that it “undertook a diligent evaluation of the legal and operational impacts of the IHS’s actions,” and that those impacts “were complex, multifaceted and in part unclear.” Motion to Extend Time to Appeal. The Tribe also contends that, despite its diligent actions to coordinate schedules, arrange access to expertise, and derive consensus, it was not possible to file its appeal within the 30-day time period.

We do not question the Tribe’s diligence in evaluating this matter, but we conclude that its reasons fall short of demonstrating that extenuating circumstances actually prevented it from filing a timely notice of appeal.

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<sup>1</sup> If an informal conference is held, *see* 25 C.F.R. § 900.153 - 900.156, a tribe has 30 days from receipt of the recommended decision issued after the informal conference to file an appeal, *id.* § 900.157. *See Catawba Indian Nation v. Eastern Regional Director*, 44 IBIA 106, 106-07 (2007).

<sup>2</sup> In the present case, the Tribe’s request for an extension was filed within the 60-day period allowed for such requests.

The requirements for filing an ISDA notice of appeal are not cumbersome. In substance, the notice of appeal need only “[b]riefly state” why the tribe thinks the decision being appealed is wrong and need only “[b]riefly identify the issues involved in the appeal.” 25 C.F.R. § 900.158(c).<sup>3</sup> After an appeal is filed and referred by the Board to an Administrative Law Judge for a hearing, there is an opportunity to further clarify the issues. *See id.* § 900.161(b)(3). In addition, the Board has previously cautioned that when uncertainties arise concerning the time for filing an ISDA appeal, a tribe would be well-advised to file a protective notice of appeal and to request a stay. *See Pascua Yaqui Tribe v. Acting Director, Tucson Area Office, Indian Health Service*, 32 IBIA 98, 100 n.1 (1998) (tribe requested an informal conference, but the agency failed to respond and an informal conference was never held). The same principle applies when a tribe is trying to decide *whether* to file an appeal. The better course of action is to file a protective notice of appeal and request an immediate stay, pending further evaluation of the matter or negotiations among the parties.

The Tribe’s reasons for not filing a timely appeal in this case do not adequately show that the Tribe was prevented from filing a protective notice of appeal, even if it needed additional time to evaluate the legal and operational impacts of the Director’s decision, and even if additional time was needed to decide whether to actually pursue the appeal, once it was filed. We conclude that the Tribe has not shown that it has a valid reason why it should be granted an extension of time to file this ISDA appeal.

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. 900.159, the Board denies the Tribe’s request for an extension of time in which to file its notice of appeal, and dismisses the notice of appeal as untimely.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

\_\_\_\_\_  
// original signed  
Debora G. Luther  
Administrative Judge

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<sup>3</sup> The notice must also state whether the tribe wants a hearing on the record or wants to waive a hearing.