



INTERIOR BOARD OF INDIAN APPEALS

Kiowa Election Board v. Acting Anadarko Area Director, Bureau of Indian Affairs

19 IBIA 241 (02/25/1991)



United States Department of the Interior

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

KIOWA ELECTION BOARD,	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 90-145-A
ACTING ANADARKO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 25, 1991

This is an appeal from an August 3, 1990, decision of the Acting Anadarko Area Director, Bureau of Indian Affairs, declining to consider an attempted appeal from a decision of the Appellate Court, Western Oklahoma Court of Indian Offenses. The Acting Area Director's decision states:

I cannot consider this filing as a valid administrative appeal for the reasons stated below.

Title 25, Code of Federal Regulations, Section 2.3(b), Applicability, provides only for administrative appeals of a decision in those cases in which no other regulation or federal statute provides another specific appeal procedure. Section [11.6] sets out a specific procedure for appeals from decisions of CFR trial courts. Rule 1.1 of the Anadarko Area Court of Indian Appeals provides for one court to "hear appeals from decisions of the Court of Indian Offenses." This appellate court issues final decisions for the CFR court system. These rules were approved and are in effect under Section 11.5. We believe that this meets the requirements of Section 2.3(b) as a specific appeals process.

Also, 25 CFR Section [11.21(a)] precludes Bureau officials from directing the judges in their case decisions. When they are hearing and deciding a case, the judges are vested in their judicial roles. Therefore, no administrative appeals are accepted from decisions of the Appellate Court. To accept such appeals would destroy the credibility and judicial independence of the court. It is the policy of the Bureau to encourage judicial independence not only for CFR Courts but for tribal courts as well.

Appellant's notice of appeal from this decision was received by the Board on August 31, 1990, and states:

The Acting Area Director's decision affirmed decisions of November 2, 1989 (filed on November 28, 1989), by the Honorable Phil Lujan and May 11, 1990, by the Court of Indian Appeals. In those decisions, the

courts granted relief to an unconstitutional candidate for tribal office despite proof that: (1) the candidate failed to exhaust administrative remedies; (2) the candidate's requested relief was barred by laches; and (3) the courts relied upon and expanded an unconstitutional 1986 decision by the Kiowa Hearing Board.

The Acting Area Director's decision is based upon 25 CFR 2.3(b) and [11.21(a)]. The Kiowa Election Board will file its appeal documents in this case in the near future.

Although a briefing schedule was established, appellant did not file a brief or any other appeal documents.

Appellant's notice of appeal incorrectly characterized the Acting Area Director's decision as an affirmance of the decision of the Court of Indian Offenses; it is clear that the Acting Area Director did not reach the merits of appellant's attempted appeal. While appellant alleges error in the decision of the Court of Indian Offenses, it does not allege error in the only conclusion reached by the Acting Area Director in his August 3, 1990, decision, *i.e.*, that he lacked authority to review the Court of Indian Offenses decision under 25 CFR Part 2.

In this case, appellant has not attempted to show error in the decision made by the Acting Area Director. Indeed, by totally ignoring the Acting Area Director's decision and trying instead to appeal the decision issued by the Court of Indian Offenses to yet another forum, appellant has not even met its threshold obligation of alleging error. Under these circumstances, this appeal must be dismissed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative judge