



INTERIOR BOARD OF INDIAN APPEALS

Calvin C. Hackford v. Phoenix Area Director, Bureau of Indian Affairs

30 IBIA 270 (04/11/1997)

Related Board case:

33 IBIA 144

Reconsideration denied, 33 IBIA 274



United States Department of the Interior

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

CALVIN C. HACKFORD,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 97-108-A
PHOENIX AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	April 11, 1997

Calvin C. Hackford has appealed to the Board of Indian Appeals (Board) under 25 C.F.R. § 2.8. Hackford states that he seeks review of the failure of the Phoenix Area Director, Bureau of Indian Affairs (Area Director; BIA), to respond to appeals which he filed on February 24, 1995, and January 29, 1997. Hackford further states that the appeals to the Area Director sought review of the failure of the Superintendent, Uintah and Ouray Agency, BIA (Superintendent), to take action on a request for decision which he filed with the Superintendent on January 18, 1995. From the materials before the Board, it appears that Hackford seeks a determination that he is an Indian of the Ute Indian Tribe of the Uintah and Ouray Reservation for purposes of receiving irrigation water from the Uintah Irrigation Project and under the decision in Hackford v. Babbitt, 14 F.3d 1457 (10th Cir. 1994).

By order dated March 18, 1997, the Board requested the Area Director to respond to Hackford's appeal. In a filing which the Board received on April 9, 1997, the Area Director stated that, upon receiving Hackford's January 29, 1997, notice of appeal, he had instituted a search of office records and had been unable to locate a February 24, 1995, letter. He submitted a copy of a March 19, 1997, letter he had written to Hackford stating that he intended to address the matters raised in the January 29, 1997, letter, and requesting copies of documents referenced in that letter so that he could understand the issues. The Area Director requested that the Board stay this matter until 30 days after he receives a response to his March 19, 1997, letter.

It is apparent from the Area Director's response that he is addressing Hackford's appeal. In Shaahook Group of Capitan Grande Band of Diegue Mission Indians v. Director, Office of Tribal Services, 27 IBIA 43, 45 (1994), the Board stated:

[T]he information before the Board is that the Director is working on appellant's request, although [the Director's] * * * letter did not precisely meet the requirements of 25 CFR 2.8. Section 2.8 is an action-forcing mechanism. It has been the Board's experience that when BIA is working on a response to a request for action under section 2.8, even though BIA has not technically met all of

the requirements of that section, it is more beneficial to the parties to allow BIA to complete its review, and issue a decision. It sees no reason to believe that this case is different.

Similarly, the Board sees no reason to believe that the present case is different. Therefore, the Board dismisses this appeal so that the Area Director may continue to address, and perhaps resolve, Hackford's concerns.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the failure of the Phoenix Area Director to respond to Hackford's February 24, 1996, and January 29, 1997, notices of appeal is docketed and dismissed without prejudice. If Hackford disagrees with the decision he receives from the Area Director, he may appeal that decision to the Board in accordance with the appeal instructions which the Area Director will include in his decision.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge