



INTERIOR BOARD OF INDIAN APPEALS

G. H. G. v. Acting Rocky Mountain Regional Director, Bureau of Indian Affairs

39 IBIA 27 (04/29/2003)

This decision has been redacted under 5 U.S.C. § 552(b)(6) by substituting initials for certain names.



# 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

G. H. G.,  
Appellant

v.

ACTING ROCKY MOUNTAIN REGIONAL  
DIRECTOR, BUREAU OF INDIAN  
AFFAIRS,  
Appellee

: Order Vacating Decision and  
: Remanding Case  
:  
: Docket No. IBIA 02-167-A  
:  
: April 29, 2003

Appellant G. H. G. seeks review of an August 13, 2002, decision of the Acting Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning a hold placed on Appellant's Individual Indian Money (IIM) account by the Superintendent, Crow Agency, BIA (Superintendent). For the reasons discussed below, the Board of Indian Appeals (Board) vacates the Regional Director's decision and remands this matter for further proceedings.

On September 6, 2001, the United States District Court for the District of Montana entered a judgment in United States v. Gardner, CR-00-93-BLG-JDS, in which Appellant was sentenced to prison and ordered to pay restitution to the Crow Tribe, a private individual, a mortuary, and the State of Montana. On December 17, 2001, a paralegal specialist in the Office of the United States Attorney for the District of Montana wrote to the Superintendent, enclosing a copy of the judgment and stating:

The U.S. Attorney's Office is responsible for collection of this restitution debt. Pursuant to 25 CFR 115.9, [1/] I request that restitution payments be made from any funds available in [Appellant's] IIM account.

Any payments made toward [Appellant's] restitution should be made payable to "Clerk, U.S. District Court."

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<sup>1/</sup> The regulations in 25 C.F.R. Part 115 were amended at 66 Fed. Reg. 7068, 7094 (Jan. 22, 2001). The amendments took effect on Mar. 23, 2001, prior to the request for payment in this case. Although 25 C.F.R. § 115.9 was not in effect on Dec. 17, 2001, it was substantially the same as present 25 C.F.R. § 115.104, which is quoted in text below.

The Superintendent wrote to Appellant on December 20, 2001, stating that he intended to place a hold on Appellant's IIM account, "as ordered by" the Federal district court. He informed Appellant of his right to request a hearing. Appellant responded on January 13, 2002, stating that he was in prison and needed time to prepare his response. The Superintendent interpreted Appellant's letter as a request for a hearing and informed Appellant that, in light of his incarceration, a hearing could be conducted by telephone. Although the administrative record does not include a transcript of a hearing, one was apparently held on February 26, 2002. The Superintendent issued a decision on February 28, 2002, in which he again stated his intent to place a hold on Appellant's IIM account. His decision letter indicates that, during the hearing, Appellant had requested that only a portion of his IIM funds be made available for payment of restitution. Concerning this request, the Superintendent stated: "We can not negotiate what percentage will be provided to the District Court, the Judgment clearly advises this office to make payable all funds available to the U.S. District Court Clerk. Therefore, we must restrict your IIM account at this time and make payments as instructed." Superintendent's Feb. 28, 2002, Decision at 1.

Appellant appealed to the Regional Director, who affirmed the Superintendent's decision, stating: "Court orders that are handed down from the presiding judge are final. Therefore, the Superintendent's decision to place a hold on your IIM account is upheld." Regional Director's Aug. 13, 2001, Decision at 2.

In his brief before the Board, Appellant argues:

[T]here is nothing in the judge's order, concerning my sentence, that specifically orders my IIM account to be HELD. Sure, I was ordered to pay restitution and I am willing to pay. I have never refused to pay the restitution. The U.S. Attorney's letter to the Superintendent, Crow Agency, was not a court order, and not a part of my sentencing order. I do feel my due process rights have been violated, concerning this case.

The Regional Director did not file a brief.

It is apparent from the Superintendent's and Regional Director's decisions that both officials believed they were required by the September 6, 2001, judgment to make all funds in Appellant's IIM account available for the court-ordered restitution. However, as Appellant argues, nothing in the judgment directed BIA to pay over funds in Appellant's IIM account. The letter from the U.S. Attorney's Office did not purport to direct BIA to pay over funds but, rather, made a request for payment, citing 25 C.F.R. Part 115.

BIA's authority to pay debts or claims from funds in IIM accounts derives from 25 U.S.C. § 410, which provides:

No money accruing from any lease or sale of lands held in trust by the United States for any Indian shall become liable for the payment of any debt of, or claim against, such Indian contracted or arising during such trust period, or, in the case of a minor, during his minority, except with the approval and consent of the Secretary of the Interior.

Regulations implementing 25 U.S.C. § 410 appear in 25 C.F.R. Part 115. 25 C.F.R. § 115.104 provides in pertinent part:

Funds of individuals may be applied by the Secretary or his authorized representative against delinquent claims of indebtedness to the United States or any of its agencies or to the tribe of which the individual is a member, unless such payments are prohibited by acts of Congress, and against money judgments rendered by courts of Indian offenses or under any tribal law and order code.

25 C.F.R. § 115.601 provides in part:

Under what circumstances may the BIA restrict your IIM account through \* \* \* an encumbrance?

\* \* \* \* \*

(b) The BIA may restrict your IIM account through an encumbrance if the BIA:

(1) Receives an order from a court of competent jurisdiction awarding child support from your IIM account; or

(2) Receives from a third party:

(i) A copy of the original contract between you and the third party in which you used your IIM funds as security/collateral for the transaction;

(ii) A copy of the document showing that the BIA approved in advance the use of your IIM funds as security/collateral for the contract;

(iii) Proof of your default on the contract according to the terms of the contract; and

(iv) A copy of the original assignment of IIM income as security/ collateral for the contract that is signed and dated by you and is notarized;

(3) Receives a money judgment from a Court of Indian Offenses pursuant to 25 CFR 11.208 or under any tribal law and order code;

(4) Is provided documentation showing that BIA or OTFM [Office of Trust Funds Management] caused an administrative error which resulted in a deposit into your IIM account, or a disbursement to you, or to a third party on your behalf; or

(5) Is provided with proof of debts owed to the United States pursuant to § 115.104 of this part.

25 U.S.C. § 410 vests discretionary authority in the Secretary of the Interior with respect to the payment of debts and claims from IIM accounts. E.g., Miller v. Anadarko Area Director, 26 IBIA 97, 102 (1994). However, in promulgating the two regulatory provisions just quoted, BIA has restricted its discretion by specifying the circumstances under which it may use funds in an IIM account to pay debts or claims against the account holder. Cf. Cross v. Acting Portland Area Director, 23 IBIA 149 (1993) (In promulgating the regulations in 25 C.F.R. Part 151, the Department has restricted the discretionary authority granted to it under 25 U.S.C. § 465). The Superintendent and the Regional Director are bound by the regulations in Part 115.

It is not immediately apparent that the restitution ordered by the Federal district court falls within any of the categories listed in 25 C.F.R. § 115.601(b). However, Appellant is a member of the Crow Tribe and thus the portion of the restitution owed to that Tribe may fall within 25 C.F.R. § 115.104, if it is a “delinquent claim of indebtedness” within the meaning of that section. 2/ There is insufficient information in the present record to make that determination. In fact, there is nothing in the record which shows why Appellant was ordered to

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2/ There appears to be a discrepancy between section 115.104 and subsection 115.601(b) in that debts to tribes are mentioned in section 115.104 but not in subsection 115.601(b). In contrast, money judgments rendered by Courts of Indian Offenses or under tribal law and order codes are mentioned in subsection 115.601(b)(3), and debts owed to the United States are mentioned in subsection 115.601(b)(5). Nothing in the preamble to the Federal Register publication of the 2001 amendments to Part 115 addresses this apparent discrepancy. However, the Board reaches no conclusion here as to the significance, if any, of the apparent discrepancy.

pay restitution to the Tribe or to any of the other payees. Accordingly, it cannot be conclusively determined at this time whether payment of any of the restitution is authorized under Part 115.

This matter must be remanded to the Regional Director for further proceedings. Upon remand, the Regional Director shall obtain from the U.S. Attorney's Office, either directly or through the Superintendent, information as to whether any restitution remains unpaid. If so, he shall further obtain all available information concerning the restitution ordered for each of the four payees. 3/ If BIA determines that any unpaid restitution falls within the scope of Part 115, another hearing shall be conducted. All provisions of Part 115 concerning hearings shall be followed to the extent possible in light of Appellant's incarceration. The hearing shall be recorded, as required by 25 C.F.R. §§ 115.613 and 115.614. If BIA determines that any portion of the unpaid restitution falls within Part 115 and Appellant again requests that only part of his IIM funds be made available for payment of restitution, BIA shall consider arguments Appellant makes in support of his request and shall address those arguments in its decision, which shall be issued in accordance with 25 C.F.R. § 115.616. The decision shall be appealable under 25 C.F.R. Part 2.

If BIA determines that none or only part of the restitution falls within the scope of Part 115, it shall so advise the U.S. Attorney's Office and the restitution payees, who may appeal that determination under 25 C.F.R. Part 2.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director's August 13, 2002, decision is vacated and this matter is remanded for further proceedings as discussed above. 4/

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Kathleen R. Supernaw  
Acting Administrative Judge

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3/ The payees have not been treated as interested parties in this matter. However, they clearly have an interest. Upon remand, the Regional Director shall ensure that they receive notice and opportunity to participate in all proceedings.

4/ The Regional Director might be well advised to seek assistance from the Solicitor's Office in implementing this decision.