



INTERIOR BOARD OF INDIAN APPEALS

Seminole Nation of Oklahoma v. Acting Eastern Oklahoma Regional Director,
Bureau of Indian Affairs

37 IBIA 154 (02/26/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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SEMINOLE NATION OF OKLAHOMA,	:	Order Denying Request under 25 C.F.R.
Appellant	:	§ 900.159 for Extension of Time to
	:	File Notice of Appeal
v.	:	
	:	
ACTING EASTERN OKLAHOMA	:	Docket No. IBIA 02-60-A
REGIONAL DIRECTOR, BUREAU	:	
OF INDIAN AFFAIRS,	:	
Appellee	:	February 26, 2002

The Seminole Nation of Oklahoma, through its Principal Chief, Jerry Haney, seeks an extension of time under 25 C.F.R. § 900.159 in which to file a notice of appeal from a January 3, 2002, decision of the Acting Eastern Oklahoma Regional Director, Bureau of Indian Affairs, concerning certain Indian Self-Determination Act contract matters.

The Nation concedes that its notice of appeal was not filed within the 30-day period specified in 25 C.F.R. § 900.158(a). It therefore invokes 25 C.F.R. § 900.159, which provides:

May an Indian tribe or tribal organization get an extension of time to file a notice of appeal?

Yes. If the Indian tribe or tribal organization needs more time, it can request an extension of time to file its Notice of Appeal within 60 days of receiving either the initial decision or the recommended decision resulting from the informal conference. The request of the Indian tribe or tribal organization shall be in writing, and shall give a reason for not filing its notice of appeal within the 30-day time period. If the Indian tribe or tribal organization has a valid reason for not filing its notice of appeal on time, it may receive an extension from the IBIA.

The Nation thus describes its reason for requesting an extension of time: "Due to matters in litigation and hearings involving the Executive Office, the Seminole Nation was

unable to file an appeal within the 30-day period. Insufficient time for review and decision for possible filing of Notice of Appeal is the reason for not filing in a timely manner.”

Section 900.159 requires that a tribe have a “valid” reason for not filing a timely notice of appeal. Although the regulation itself is not explicit as to what a valid reason for not filing a timely notice of appeal might be, the preamble to the final regulations offers some guidance. The preamble states:

One comment recommended deletion of Sec. 900.159 because any request for an extension should be made within the 30-day time frame in Sec. 900.158. This recommendation was not adopted because, although a matter of considerable debate during the [Negotiated Rulemaking] Committee's negotiations, it was agreed that there could be extenuating circumstances that could prevent a[n] Indian tribe or tribal organization from filing its notice of appeal within the 30-day time frame in Sec. 900.158.

61 Fed. Reg. 32482, 32497 (June 24, 1996).

The Committee made it clear in this statement that it did not intend to authorize the routine filing of requests for extensions of time. Further, by providing in the regulation itself that a tribe may be granted an extension of time, the Committee expressed its intent to vest the Board with discretion in determining whether an extension of time should be granted.

In the exercise of its authority under 25 C.F.R. § 900.159, the Board construes the regulation with the aid of the above-quoted statement from the preamble and concludes 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. The key concept here is the concept of “prevention.” It is not enough that a tribe show that it was inconvenient for it to prepare and file a timely notice of appeal. Rather, it must show that it was actually precluded from filing a timely notice of appeal.

Further, the tribe must do more than simply allege in summary fashion that it was prevented from filing a timely notice of appeal by some particular circumstances. It must support its allegation with an explanation of how and why the described circumstances prevented it from filing a timely notice of appeal.

In this case, the Nation has offered only the most cursory explanation for its failure to file a timely notice of appeal. The Board finds that the Nation has failed to show a valid reason for not filing its notice of appeal on time.

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 Nation's request for an extension of time in which to file a notice of appeal is denied. Accordingly, the Regional Director's January 3, 2002, decision is final for the Department of the Interior.

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Anita Vogt
Administrative Judge

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Kathryn A. Lynn
Chief Administrative Judge