



INTERIOR BOARD OF INDIAN APPEALS

Hannah Finnesand v. Commissioner of Indian Affairs

3 IBIA 263 (02/25/1975)

Judicial review of this case:

Consent decree, *Finnesand v. Morton*, No. A75-42 (D. Alaska Mar. 11, 1976)



# United States Department of the Interior

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

ADMINISTRATIVE APPEAL OF  
HANNAH FINNESAND,  
A NATIVE ALASKA INDIAN  
v.  
COMMISSIONER OF INDIAN AFFAIRS

IBIA 75-21-A

Decided February 25, 1975

Appeal from the September 3, 1974, decision of the Commissioner of the Bureau of Indian Affairs wherein appellant demands that "the Policy" of the Bureau appearing as 66 IAM 3.1.7.A(3) be declared void and unconstitutional, and that Indian welfare assistance to the appellant be declared retroactively.

Remanded to the Commissioner.

1. Indians: Welfare

Where the manual for the conduct of the business of the Bureau of Indian Affairs is issued by the Commissioner under authority delegated by the Secretary, the Board of Indian Appeals lacks jurisdiction to declare the policy reflected by the provisions of the manual to be improper or void or unconstitutional.

2. Administrative Procedure: Hearings

Where determination of issues of fact are appropriate and necessary for the exercise of Secretarial discretion, the Hearings Division of the Office of Hearings and Appeals will schedule and hold a hearing at the Secretary's direction to serve as a basis for findings of fact.

APPEARANCES: Bruce C. Twomley, Attorney, Alaska Legal Services Corporation, Anchorage, Alaska.

OPINION BY CHIEF ADMINISTRATIVE JUDGE MCKEE

The Appellant is a Native Alaskan woman who had been separated for many years from her non-Indian husband whose whereabouts have long been unknown.

The Appellant filed applications for welfare assistance with both the State of Alaska and the Bureau of Indian Affairs. The allowance of assistance by the State was substantially delayed, and the Bureau at first denied relief relying upon the provision in the Bureau Manual 66 IAM 3.1.7A(3) which is as follows:

The needs of the natural children and spouse of a non-Alaska Native father who continues to be legally responsible for their support are not to be included in a general assistance budget or grant. The responsibility for meeting the assistance needs of such needy families rests with the State through its general relief program or through AFDC, if eligibility exists. In such families if legal responsibility has not been established, or has been removed or the non-Native father is incapacitated or is absent from the home, AFDC should be available.

\* \* \* \* \*

At a later date, relief, through the Indian Bureau, was granted by the Commissioner on a temporary basis as an "administrative exception," and at approximately the same time state welfare assistance was granted.

During the delays appellant could not pay her rent; her landlord obtained a \$1,500 judgment against her which she could not pay; and she was evicted from her home.

She now alleges that the Bureau "Policy" as set forth supra in the manual is void and unconstitutional, and she demands a retroactive allowance of Bureau relief dating back to the date she established her qualification as a Native Alaska Indian. This demand upon the Commissioner was denied, and that decision is here appealed.

This appeal was referred to this Board and was duly docketed with opportunity afforded to appellant's attorney to file a brief. It was not until the brief was filed that the appellant's position and, the issues became clearly apparent.

The operating manual of the Bureau was issued by, and it is within the discretion of the Secretary and the Commissioner to amend or to strike provisions thereof.

The delegation of authority by the Secretary on December 14, 1973 (211 DM 13.7) to the Board of Indian Appeals of the Office of Hearings and Appeals is to decide appeals "\* \* \* involving determinations, findings, and orders [of administrative officials of the Bureau of Indian Affairs] protested as a violation of a right or privilege of the appellant \* \* \*." This delegation is not construed to include the power to exercise the Secretary's discretionary authority.

This appeal should be and accordingly it is hereby retransferred to the Commissioner of Indian Affairs for further disposition by him or the Secretary.

A request for formal hearing was made in the Commissioners' referral of this appeal to the Director, Office of Hearings and Appeals and to this Board on October 11, 1974. Nothing herein shall be construed as a bar, upon receipt of a directive therefor, to the holding of a fact-finding hearing and the issuance by an Administrative Law Judge of recommended findings of fact as an aid to the determination of the policy issues presented. Upon receipt of a directive for a hearing an appropriate order therefor will be issued by the Board.

//original signed

David J. McKee  
Chief Administrative Judge

I concur:

//original signed

Alexander H. Wilson  
Administrative Judge