



INTERIOR BOARD OF INDIAN APPEALS

Donald Benally v. Navajo Area Director, Bureau of Indian Affairs

10 IBIA 70 (08/24/1982)

Denying reconsideration of:

9 IBIA 284



United States Department of the Interior

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

DONALD BENALLY,	:	Docket No. IBIA 81-24-A
Appellant	:	
	:	
v.	:	Order denying petition for
	:	reconsideration
NAVAJO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
AND NAVAJO TRIBE,	:	
Appellees	:	August 24, 1982

On June 22, 1982, following application by appellant for review by the Director of the Office of Hearings and Appeals of the Board's decision issued May 26, 1982 (9 IBIA 284, 89 I.D. 252), the Board established a briefing schedule pursuant to 43 CFR 4.315 to permit the parties to brief the issues raised by appellant in support of his application for reconsideration. That time has now expired: Appellant has supplied two briefs in support of his petition; appellee Navajo Tribe has supplied a comment upon appellant's request for review dated June 11, 1982, addressed to the Director.

In support of his petition for reconsideration, appellant urges that the Board's decision should be reconsidered because it is erroneous. The mere allegation of the existence of error, however, is not alone a basis for ordering reconsideration.

Thus appellant argues first that the Board's decision misconstrues the relationship between the Navajo Tribe and the Department of the Interior by attributing to the tribe the power to enact resolutions affecting tribal elections without Secretarial approval. This same argument was presented earlier and decided by the opinion dated May 26, 1982, 9 IBIA 284, 290 (and see 9 IBIA at 290 n.1).

Second, appellant cites Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978), and argues that the Board's opinion misapplies the teaching of that opinion. The Board, however, considered this argument, which was raised by appellant previously, and applied the cited case law at 9 IBIA 284, 290. Third, appellant argues that Navajo tribal law (specifically Tribal Resolutions CJV-55-66 and CF-23-80) was not properly applied: This argument was raised previously and is addressed at 9 IBIA 284, 293.

Finally, appellant argues that the effect of the Board's decision is to give retroactive application to the tribal resolution which was found to be controlling here. This argument was exhaustively briefed by the parties and is discussed at 9 IBIA 284, 291-92, where it becomes the principal basis for the Board's holding in this case.

These arguments were all previously briefed and considered. The identical arguments urged as a basis for reconsideration were the principal arguments by appellant on appeal. The assertion that because the decision issued on May 26, 1982, rejected these arguments, it was in error, is not a sufficient basis for reconsideration. Reconsideration is not a further review of the merits on appeal, but an extraordinary remedy. See 43 CFR 4.315(a).

Accordingly, the petition for rehearing is denied.

//original signed
Franklin D. Arness
Administrative Judge

We concur:

//original signed
Wm. Philip Horton
Chief Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge