



INTERIOR BOARD OF INDIAN APPEALS

Carmen V. Chasteen v. Anadarko Area Director, Bureau of Indian Affairs

11 IBIA 209 (06/03/1983)



## United States Department of the Interior

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

CARMEN V. CHASTEEN : Order Dismissing Appeal  
:   
v. :   
: Docket No. IBIA 83-30-A  
ANADARKO AREA DIRECTOR, :   
BUREAU OF INDIAN AFFAIRS : June 3, 1983

On May 2, 1983, the Board of Indian Appeals received a notice of appeal filed by Carmen V. Chasteen (appellant), through counsel, Karl A. Funke, Esq., Washington, D.C., from a decision rendered by the Anadarko Area Director, Bureau of Indian Affairs (BIA). The decision involved the leasing of appellant's Indian trust allotment. Appellant sought Board review of the decision on the grounds that the Deputy Assistant Secretary--Indian Affairs (Operations) had failed to issue a decision in her appeal within 30 days from the date on which it was ready for decision, in violation of 25 CFR 2.19.

By order dated May 2, 1983, the Board made a preliminary determination that it had jurisdiction over this case and requested that the administrative record be forwarded to it. The order further requested that the BIA transmit the record to the Board within 30 days or inform both the Board and the parties when the record would be sent.

On May 31, 1983, the Board received a memorandum dated May 23, 1983, and signed by the Assistant Secretary for Indian Affairs concerning this appeal. That memorandum stated that during review of the BIA's draft decision in this case, the Solicitor's Office had determined that the draft was "not legally supportable, and [had undertaken] a review of the legal issues involved in order to advise the Bureau of some viable alternative for dealing with Ms. Chasteen's appeal."

The revised decision, signed by the Deputy Assistant Secretary, was also received by the Board on May 31, 1983. This decision finds

that there were administrative inconsistencies on the part of the Anadarko Agency Office in following the prescribed leasing procedures and that the appellant did not accept the terms of the lease. This, even though the Superintendent properly considered the exigencies of nature's seasonal advances (159 cultivable acres requiring preparation for a fall seeding) and, equally importantly, the best interests of the other nine landowners (who have a 75 percent ownership interest in the land) his approval of the lease was invalid because it had not been executed by Ms. Chasteen or by someone authorized to act on her behalf. We would also note that the negotiated annual rent exceeds the appraised fair market value of the land by more than 10 percent.

In view of the above facts, we are directing the Anadarko Area Office to allow Ms. Chasteen three months from the receipt of this decision in which to negotiate with the lessee and to execute the lease agreement. If no agreement has been reached by the end of the three months, the Superintendent of the Anadarko Agency is authorized, pursuant to 25 CFR § 162.2(a)(4), to execute the lease on behalf of Ms. Chasteen. Upon final execution of the lease by Ms. Chasteen, or the Superintendent, the lease can then be retroactively approved to January 1, 1983.

The Assistant Secretary's memorandum concludes:

Upon review, I have determined that, in order to protect the interests of the other lessors, and to avoid additional delay in resolving this issue, the Deputy Assistant Secretary--Indian Affairs (Operations) should sign the decision and remand this case back to the Area Office for action consistent with the decision. I am also adopting the Deputy Assistant Secretary's decision \* \* \* as the Department's decision on this matter and making it final for the Department, cf. Nelvette Siemion v. Assistant Secretary for Indian Affairs, 11 IBIA 37 (1983).

Based upon this information, the Board finds that appellant's appeal has been addressed by the Assistant Secretary for Indian Affairs, a Secretarial level official of the Department of the Interior over whom the Board has no general review authority. Since the decision was not referred to the Board, it is final for the Department. Juanita Melsheimer v. Assistant Secretary for Indian Affairs, 11 IBIA 155, 90 I.D. 165 (1983); Nelvette Siemion, supra.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed.

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//original signed  
Wm. Philip Horton  
Chief Administrative Judge

I concur:

\_\_\_\_\_  
//original signed  
Jerry Muskrat  
Administrative Judge