



INTERIOR BOARD OF INDIAN APPEALS

Vonley Weaskus, et al. v. Portland Area Director, Bureau of Indian Affairs

18 IBIA 141 (02/07/1990)

Related Board case:
18 IBIA 233



United States Department of the Interior

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

VONLEY WEASKUS, ET AL.,	:	Order Dismissing Appeal
Appellants	:	
	:	
v.	:	
	:	Docket No. IBIA 90-41-A
PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 7, 1990

On January 8, 1990, the Board of Indian Appeals received a notice of appeal from Vonley Weaskus, Agnes Weaskus, Diana Broncheau Halfmoon, and Honoree Broncheau, through counsel, Bob J. McCarthy, Esq., Lewiston, Idaho. Appellants stated that they were appealing the inaction of the Portland Area Director, Bureau of Indian Affairs, concerning their request for access to a trespass file on a 1985 timber trespass, disbursement of trespass funds to allotment owners, and mitigation of trespass damage by tree planting. Appellants also stated that they had appealed the Area Director's denial of access to the trespass file to the Freedom of Information Act (FOIA) Officer.

By order issued on January 9, 1990, the Board held that it lacked jurisdiction over the appeal insofar as it concerned access to the trespass file, in light of the special procedures for FOIA appeals set out at 43 CFR Part 2. The Board also noted that appellants had apparently not followed the procedures for appeals from inaction of BIA officials specified at 25 CFR 2.8 (54 FR 6478, 6481 (Feb. 10, 1989)). The Board therefore ordered appellants to show cause why their appeal should not be dismissed for lack of jurisdiction. Appellants' response was received by the Board on February 5, 1990.

Appellants' response does not show that the Board has jurisdiction over this appeal. By letter of August 30, 1989, appellants sought a decision from the Superintendent, Northern Idaho Agency, concerning "release [of] trespass monies, with interest, to allotment owners; mitigation of trespass damage by tree-planting; and access to the trespass file under [FOIA]." The letter stated that unless the Superintendent made a decision within 10 days, appellants would appeal to the Area Director. The letter was partially, although not entirely, in conformity with the requirements of 25 CFR 2.8(a). 1/

1/ 25 CFR 2.8(a) provides:

"A person or persons whose interests are adversely affected, or whose ability to protect such interests is impeded by the failure of an official to act on a request to the official, can make the official's inaction the subject of appeal, as follows:

"(1) Request in writing that the official take the action originally asked of him/her.

The Superintendent did not issue a decision as requested. Instead, he forwarded appellants' August 30 letter to the Area Director, who responded, by letter of September 21, 1989, to appellants' FOIA request. Appellants interpreted this letter as a refusal by the Area Director to act on the remainder of the requests contained in the August 30 letter to the Superintendent. They then attempted to appeal to the Assistant Secretary - Indians Affairs and, finally, to the Board.

It is apparent from the documents submitted by appellants that they never filed an appeal with the Area Director concerning the Superintendent's inaction on their non-FOIA requests. Appellants argue that, in this case, appeal to the Area Director would be "futile and unwarranted." Unfortunately for appellants' argument, 25 CFR 2.8(b) clearly states that an appeal from the inaction of a BIA official must be made to the "next official in the process established in this part," in this case, the Area Director. Since the appeal was not properly before the Area Director, appellants have no basis for an appeal to the Board on the grounds of inaction by the Area Director.

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 without prejudice for lack of jurisdiction.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge

fn. 1 (continued)

"(2) Describe the interest adversely affected by the official's inaction, including a description of the loss, impairment or impediment of such interest caused by the official's inaction;

"(3) State that, unless the official involved either takes action on the merits of the written request within 10 days of receipt of such request by the official, or establishes a date by which action will be taken, an appeal shall be filed in accordance with this part."