



INTERIOR BOARD OF INDIAN APPEALS

Cora Marion v. Billings Area Director, Bureau of Indian Affairs

18 IBIA 395 (08/15/1990)



United States Department of the Interior

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

CORA MARION

v.

BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-50-A

Decided August 15, 1990

Appeal from a decision declining to seek legislation.

Affirmed.

1. Administrative Procedure: Standing--Indians: Lands: Allotments on Public Domain: Generally

An individual Indian landowner's standing to bring an appeal in a matter concerning Indian lands is limited to her own ownership interest unless she has been authorized by other landowners to represent them and is a qualified representative under 43 CFR 1.3.

2. Board of Indian Appeals: Jurisdiction--Bureau of Indian Affairs: Administrative Appeals: Discretionary Decisions--Indians: Lands: Allotments on Public Domain: Generally

Decisions of Bureau of Indian Affairs officials concerning whether to seek legislation affecting Indian allotments on the public domain are decisions based on the exercise of discretionary authority. In reviewing such decisions, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau.

APPEARANCES: Cora Marion, pro se; Joseph A. Gourneau, Acting Billings Area Director, Bureau of Indian Affairs, for appellee.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Cora Marion seeks review of a January 29, 1990, decision of the Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to seek legislation to convey coal underlying Turtle Mountain Chippewa public domain allotments to the allottees or their heirs. For the reasons discussed below, the Board affirms the Area Director's decision.

Background

Allotments on the public domain were made to Turtle Mountain Chippewa Indians pursuant to the Act of April 21, 1904, 33 Stat. 193, 195, which provided in relevant part:

All members of the Turtle Mountain band of Chippewa Indians who may be unable to secure land upon the reservation [in North Dakota] above ceded may take homesteads upon any vacant land belonging to the United States without charge, and shall continue to hold and be entitled to such share in all tribal funds, annuities, or other property, the same as if located on the reservation: Provided, That such right of alternate selection of homesteads shall not be alienated or represented by power of attorney.

The Act of March 31, 1909, 35 Stat. 844, provided:

That any person who has in good faith located, selected, or entered under the nonmineral land laws of the United States any lands which subsequently are classified, claimed, or reported as being valuable for coal, may, if he shall so elect * * * receive a patent therefor, which shall contain a reservation to the United States of all coal in said lands, and the right to prospect for, mine, and remove the same.

Appellant owns a 1/10 interest in Turtle Mountain Chippewa public domain allotment No. 2565, located in Roosevelt County, Montana. The allotment was made to her mother, Georgianna Smith Marion, now deceased, on January 21, 1915, subject to a reservation of coal to the United States under the Act of March 3, 1909.

By letter dated January 1, 1990, appellant requested that the Billings Area Office "initiate an act to be presented to Congress to exclude the Turtle Mountain allotments from the March 3, 1909 * * * Act that reserved coal to the United States Government, and that the coal be returned to the original allottees."

By letter dated January 29, 1990, the Area Director declined to seek the legislation requested by appellant. 1/

Appellant's notice of appeal from this decision was received by the Board on February 5, 1990. The Area Director filed a statement. Appellant filed an objection to the manner in which the Area Director's statement was sent to her. 2/

1/ The Area Director's letter also addressed certain trespass claims involving the allotment. Appellant did not appeal that portion of the letter.

2/ Appellant is evidently an employee of the Billings Area Office. The Area Director's statement was apparently sent to her in a "Special Attention Mail" envelope, through the office mail, rather than to her home address.

Discussion and Conclusions

[1] The Board first considers the extent of appellant's standing to bring this appeal, in which she seeks to require BIA to pursue legislation conveying coal underlying all Turtle Mountain public domain allotments to their beneficial owners. ^{3/} Appellant has not shown that she has authority to represent anyone other than herself in this appeal. Nothing in appellant's filings indicates that other Turtle Mountain landowners have authorized her to represent them or that she is a qualified representative under 43 CFR 1.3. ^{4/} The Board finds therefore that appellant's standing in this matter is limited to her own 1/10 interest in allotment No. 2565.

[2] Under 43 CFR 4.330(b)(2), ^{5/} the Board lacks jurisdiction over the exercise of discretionary authority by BIA officials. The Board has frequently stated that, "[i]n reviewing a discretionary decision, it is not the Board's function to substitute its judgment for that of BIA. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion." E.g., Honaghaahnii Marketing & Public Relations, Inc. v. Navajo Area Director, 18 IBIA 144, 148 (1990). A decision concerning whether or not to seek legislation in a situation such as this is clearly a discretionary decision. The Board is unaware of any legal prerequisites applicable to the Area Director's decision in this case, and appellant has not shown that any exist.

The Area Director indicates in his statement before the Board that BIA presently has difficulty managing the Turtle Mountain Chippewa public domain allotments in Montana, which the Board understands to be widely scattered throughout the eastern part of the state. It is not unreasonable, under such circumstances, for the Area Director to decline to seek out further management responsibilities concerning these allotments.

fn. 2 (continued)

Another employee opened the envelope. Appellant believes that her privacy was violated.

Filings with the Board are public documents unless they are qualified for limited disclosure under 43 CFR 4.35. The Area Director's statement contained no personal information that could be considered confidential under this section.

However, appellant's record address in this appeal is her home address, and service of appeal documents should have been made to her at her record address.

^{3/} Nothing in the record shows how many of these allotments there are or how many were made with a reservation of coal to the United States.

^{4/} This section concerns authority to practice before the Department of the Interior.

^{5/} 43 CFR 4.330 provides in relevant part:

"(b) Except as otherwise permitted by the Secretary or the Assistant Secretary - Indian Affairs by special delegation or request, the Board shall not adjudicate:

* * * * *

"(2) Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority."

The Area Director has committed no legal error. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Billings Area Director's January 29, 1990, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge