



INTERIOR BOARD OF INDIAN APPEALS

Mary Luman v. Muskogee Area Director, Bureau of Indian Affairs

24 IBIA 4 (05/04/1993)

Related judicial case:

Luman v. Fields, No. CIV-97-601-S (E.D. Okla. Feb. 24, 1998)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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MARY LUMAN, : Order Docketing Appeal, Affirming
Appellant : Decision in Part, and Referring
v. : Appeal in Part to the Assistant
Secretary - Indian Affairs
: :
MUSKOGEE AREA DIRECTOR, : Docket No. IBIA 93-70-A
BUREAU OF INDIAN AFFAIRS, :
Appellee : May 4, 1993

On April 26, 1993, the Board of Indian Appeals (Board) received a notice of appeal and statement of reasons from Mary Luman (appellant), pro se. Appellant seeks review of a March 17, 1993, decision issued by the Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA).

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter. The Board finds that the circumstances of this case indicate that it can and should be considered without additional delay.

It is not clear from the materials filed with appellant's notice of appeal whether she is an enrolled tribal member. The materials indicate that appellant's affiliation either is, or would be, with the Choctaw Nation of Oklahoma.

The Area Director's decision considered five issues. The first issue related to appellant's degree of Indian blood. The Area Director stated:

You have advised us that you believe that your ancestor, Eliza A. Smith, was incorrectly enrolled with a 1/16 degree of Indian blood. You believe that she had a much higher degree of Indian blood. * * * However, Section 2, Act of August 4, 1947, states that the Dawes Commission Rolls are deemed to be accurate as to its statements of the quantum of Indian blood. This statute does not allow the BIA to change or correct the information contained in the Rolls. As a consequence, I cannot make the change in the Rolls that you request.

The statute to which the Area Director referred, section 2 of the Act of August 4, 1947, 61 Stat. 731, 732, provides:

In determining the quantum of Indian blood of any Indian heir or devisee, the final rolls of the Five Civilized Tribes as to such heir or devisee, if enrolled, shall be conclusive of his or her

quantum of Indian blood. If unenrolled, his or her degree of Indian blood shall be computed from the nearest enrolled paternal and maternal lineal ancestors of Indian blood enrolled on the final rolls of the Five Civilized Tribes.

Appellant objects that she has better evidence than BIA as to the degree of Indian blood of Eliza A. Smith. Whether or not appellant has such evidence is immaterial. As the Area Director stated, Congress has determined that the quantum of Indian blood established in the Dawes Commission rolls for the Five Civilized Tribes is conclusive. The BIA lacks authority to change Eliza A. Smith's blood quantum. Cf., Cole v. Acting Muskogee Area Director, 23 IBIA 246, recon. denied, 23 IBIA 295 (1993) (BIA lacks authority to add names to the Dawes Commission rolls). Therefore, the Area Director's decision that he could not change the blood quantum of Eliza A. Smith is affirmed.

The second issue addressed by the Area Director concerned certain per capita payments to which appellant claimed entitlement. The Area Director stated:

You believe that these payments [made by the United States in the late 1940's] were never made to you or your ancestors. This issue was the basis of your complaint in **Luman v. Chaney**, No. 89-597 (E.D. Okla. order filed May 21, 1990), aff'd No. 90-7036 (10th Cir. Order filed Dec. 6, 1990). The court dismissed your case on the basis of the statute of limitations. In addition, you have not submitted any reliable evidence that these per capita payments were not properly made. As a consequence, I must reject any claim as to this issue.

Appellant contends that she lost this case because she could not afford a lawyer and did not know how to present her case. She indicates that the courts erred in not allowing her to present the oral testimony of her witnesses, and that, after the courts' decisions, she had no alternative except "to appeal through the [BIA]."

Appellant lost her court case because it was not timely filed. The district court stated:

[Appellant's] claim seeks payment of funds from a 1949 per capita payment to members of the Choctaw Nation by the United States' government. According to the allegations in her complaint, [appellant] has been aware of said payment for at least the last twenty years. The applicable Statute of Limitations on [appellant's] claim is six years. 28 U.S.C. §2401(a); Christensen v. United States, 755 F.2d 705 (9th Cir. 1985); Nichols v. Rysavy, 809 F.2d 1317 (8th Cir. 1987).

Accordingly, the court finds [appellant's] claim barred by the Statute of Limitations as to all defendants, and defendants' motions to dismiss are granted.

The Department of the Interior lacks authority to reverse or overrule a decision issued by the Federal district and circuit courts. Accordingly, the Board affirms the Area Director's determination that the question of appellant's entitlement to these per capita payments was resolved against her by the Federal courts.

The third issue addressed concerned the issuance of a Certificate of Degree of Indian Blood (CDIB) to appellant. The Area Director's decision stated:

A CDIB may be issued on the basis of the information listed on the Rolls. This office has taken the position that it may look to more distant enrolled ancestors if the nearest enrolled ancestors' listed blood quanta are demonstrably incorrect. However, Eliza A. Smith's blood quantum does not appear to be incorrect, and any other relative of yours appears in the Rolls with a blood quantum consistent with Eliza A. Smith's blood quantum. Thus, there is no person on the Rolls to which we could trace your blood to reach a different result than that already given. However, if you can get more information with respect to your father's blood, we can issue a CDIB which takes that information in[to] account. Otherwise, there is no showing of error in the issuance of a CDIB, and I must reject this claim.

The Board construes the Area Director's decision not to alter appellant's CDIB as a decision under 25 CFR 62.4(a)(6), concerning "[t]he certification of degree of Indian blood by a [BIA] official which affects an individual." Under 25 CFR Part 62, appeals from such decisions are taken to the Assistant Secretary - Indian Affairs, rather than the Board. See 25 CFR 62.10 and 62.11. Accordingly, this portion of appellant's appeal will be referred to the Assistant Secretary.

The fourth issue considered related to appellant's allegation that certain documents in BIA's possession had been altered. The Area Director stated:

We cannot determine from photographic copies of documents dating from 1890 through 1951 that any documents were altered. In addition, I cannot find that, even assuming such alterations did occur, that they directly affected any right which you may have. As discussed above, the Rolls are deemed to be accurate by statute, and the statute of limitations has run on any claim with respect to the per capita payments. As a consequence, I must reject this claim.

Appellant objects that the alterations are clear. However, even assuming that appellant is correct, the facts remain, as stated above, that BIA lacks authority to change the blood quantum of an individual listed on the Dawes Commission rolls, and appellant's alleged entitlement to per capita payments was decided in Federal court. Even if appellant could prove that the alterations were made, the Department lacks authority to grant the

relief she requests. Accordingly, the Board affirms the Area Director's decision on this issue.

The final issue addressed by the Area Director concerns appellant's request that BIA furnish certain documents to her. The decision states:

I am unaware of any documents which the BIA may have which would be of assistance to you which ha[ve] not been provided to you, with the possible exception of documents which cannot be released under the Privacy Act, 5 U.S.C. § 552a. With respect to any [Individual Indian Money] account held in the name of Charles Smith, the BIA does not have an * * * account for this person. Furthermore, any such information would be protected by the Privacy Act and could not be released to you.

Appellant alleges that she was told that Charles Smith, husband of Eliza A. Smith, was drawing an annuity from BIA in 1992, even though she has evidence that he died in 1902. The fact that appellant was given this information, which may or may not be correct, does not entitle her to additional information that is protected by the Privacy Act. Appellant does not show any reasons why she is entitled to information relating to Charles Smith, and does not list any other documents to which she believes she is entitled. The Area Director's determination that appellant has been given the documents to which she is entitled is affirmed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the March 17, 1993, decision of the Muskogee Area Director is affirmed in part. The issue of whether or not appellant should have been given a revised CDIB is referred to the Assistant Secretary - Indian Affairs pursuant to 25 CFR Part 62.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge