



INTERIOR BOARD OF INDIAN APPEALS

Jack Gosuk v. Juneau Area Director, Bureau of Indian Affairs

25 IBIA 62 (12/01/1993)



United States Department of the Interior

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

JACK GOSUK, : Order Docketing and Dismissing
Appellant : Appeal
: :
v. : :
: Docket No. IBIA 94-22-A
JUNEAU AREA DIRECTOR, : :
BUREAU OF INDIAN AFFAIRS, : :
Appellee : December 1, 1993

On November 29, 1993, the Board of Indian Appeals (Board) received a notice of appeal from Jack Gosuk (appellant), through counsel, Frederick Torrisi, Esq., Dillingham, Alaska. Appellant seeks review of the failure of the Juneau Area Director, Bureau of Indian Affairs (Area Director; BIA), to respond to a November 8, 1993, letter requesting payment of \$235,000 from BIA for reindeer allegedly owned by appellant that were located on Hagemeister Island, Alaska, and were apparently killed by the U.S. Fish and Wildlife Service (FWS) in 1992 in an attempt to reduce the size of the herd on that island.

Although on June 1, 1992, appellant executed a conveyance of all of his right, title, and interest in the Hagemeister Island reindeer herd to the FWS for the sum of \$1, he sought a \$235,000 payment from BIA on the basis of breach of trust responsibility. On September 20, 1993, appellant offered to settle his claim against BIA for \$192,750, stating that this offer would remain open through November 5, 1993. When appellant did not receive a response, on November 8, 1993, he again wrote the Area Director, requesting that a decision be issued. Although appellant did not specifically cite 25 CFR 2.8, 1/ his letter provided that "[u]nless action is taken on the claim within 10 days of receipt of this letter, or a reasonable date established by which action will be taken, an appeal will be filed in accordance with the regulations." This statement tracks the language of 25 CFR 2.8.

When appellant still did not receive a response, he filed a notice of appeal with the Board. Based upon appellant's allegations, it appears that the Board might have jurisdiction over this matter pursuant to 25 CFR 2.8.

However, it further appears that the Board lacks authority to grant the relief appellant requests. Appellant's notice of appeal states that he "claims damages as a result of the government's taking of valuable property, held in trust for him, without adequate notice, informed consent or counsel,

1/ Section 2.8 sets forth procedures under which a BIA official's lack of action may be made the subject of an appeal.

and in violation of fiduciary duties owed to him. He seeks damages of \$250 per animal taken" (Notice of Appeal at 1). Appellant thus seeks money damages for an alleged breach of BIA's trust responsibility to him. The Board has previously stated that it is not a court of general jurisdiction and has only that authority delegated to it by the Secretary of the Interior. It has not been delegated authority to award money damages against BIA. See Welmas v. Sacramento Area Director, 24 IBIA 264, 274 n.6 (1993), and cases cited therein. Therefore, the Board lacks authority to grant appellant the relief he requests.

Alternatively, it is possible that appellant's claim might be construed as a tort claim against BIA. Tort claims against the Federal Government must be filed in accordance with the requirements of the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680 (1988). The Board is not part of this process, and therefore again lacks authority to grant the relief appellant requests.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the failure of the Juneau Area Director to take action in response to appellant's request for money damages is docketed and dismissed for lack of authority to grant the relief requested.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge