



INTERIOR BOARD OF INDIAN APPEALS

Welco Lumber Co. v. Portland Area Director, Bureau of Indian Affairs

28 IBIA 226 (10/18/1995)



United States Department of the Interior

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

WELCO LUMBER CO.,	:	Order Affirming Decisions
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 95-135-A
PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	October 18, 1995

Appellant Welco Lumber Co. sought review of two decisions issued by the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA) on May 31, 1995. The decisions adjusted the rental rates for Leases 7562 and 7563 on the Tulalip Reservation. For the reasons discussed below, the Board of Indian Appeals (Board) affirms those decisions.

Appellant's notice of appeal from the decision concerning Lease 7562 states:

1. **Decision Appealed From.** The decision of the [Superintendent, Puget Sound Agency, BIA] dated March 31, 1995, and received by [appellant] on April 4, 1995, wherein annual rent for the subject leased property was adjusted from \$21,910.00 to \$45,000.00. A copy of said decision is attached hereto. Also, the decision of the Area Director affirming same dated May 31, 1995, and received June 5, 1995, copy attached. [Emphasis in original.]

The remainder of the notice of appeal is a certificate of mailing.

Appellant's notice of appeal from the decision concerning Lease 7563 states:

1. **Decision Appealed From.** The decision of the [Superintendent, Puget Sound Agency, BIA] dated March 31, 1995, and received by [appellant] on April 4, 1995, wherein annual rent for the subject leased property was adjusted from \$8,650.00 to \$21,420.00. A copy of said decision is attached hereto. Also, the decision of the Area Director affirming same dated May 31, 1995, and received June 5, 1995, copy attached. [Emphasis in original.]

Again, the remainder of the notice of appeal is a certificate of mailing.

The notices of appeal were accompanied by a transmittal letter, which states:

The appeals pertain to a rental rate adjustment of two parcels of property leased by [appellant]. The parcels are located adjacent to each other. The issues raised in each appeal are nearly identical, so it makes sense to either consolidate the two appeals or to otherwise have them heard together.

There remain in this case factual issues that [appellant] has not yet had an opportunity to present its position upon. A referral to an Administrative Law Judge to allow both parties to present their facts would be appropriate.

Although the Board advised appellant of its right to file a brief and of the fact that it bore the burden of proving the error in the Area Director's decision, appellant made no further filings.

The Board has frequently stated that an appellant bears the burden of proving the error in the decision being appealed. An appellant who fails to make any allegation concerning how the Area Director's decision is in error, let alone any argument in support of such an allegation, has not carried its burden of proof. See, e.g., Trevino v. Anadarko Area Director, 28 IBIA 129 (1995), and cases cited therein. An unsupported allegation that there are factual issues in dispute does not carry an appellant's burden of proof or require a referral for an evidentiary hearing.

Appellant has failed to carry its burden of proof here.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Portland Area Director's May 31, 1995, decisions are affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge