



INTERIOR BOARD OF INDIAN APPEALS

Lindy Lowery Archer v. Eastern Regional Director, Bureau of Indian Affairs

38 IBIA 111 (09/12/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ARLINGTON, VA 22203

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| LINDY LOWERY ARCHER, Appellant | : | Order Affirming Decision |
| | : | |
| | : | |
| v. | : | |
| | : | Docket No. IBIA 02-14-A |
| | : | |
| EASTERN REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee | : | September 12, 2002 |

Appellant Lindy Lowery Archer seeks review of a September 10, 2001, decision issued by the Eastern Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning per capita judgment fund payments for Willard Eugene Lowery, Sr., and Robert Ernest Lowery. For the reasons discussed below, the Board of Indian Appeals (Board), affirms that decision.

On August 23, 1972, the Indian Claims Commission (Commission) awarded a judgment to the Creek Nation in Docket 275. The recommended beneficiaries of this judgment were the living descendants of the Creek Tribe of Oklahoma and Creek Indians east of the Mississippi River (the "Eastern Creeks"). Funds to cover this judgment were appropriated on October 3, 1972.

On September 22, 1978, the Commission awarded another judgment to the Creek Nation in Docket 272. This judgment related to land in Alabama which was ceded in the Treaty of March 24, 1832, 7 Stat. 366. The funds to cover this judgment were appropriated on December 11, 1978.

Distribution of these judgment funds was governed by the Indian Tribal Judgment Funds Use or Distribution Act of October 19, 1973, 25 U.S.C. §§ 1401-1407 (Judgment Funds Act). This statute requires the Secretary of the Interior, in consultation with the affected tribal governments, to prepare and submit to Congress a plan for the distribution of judgment funds. 25 U.S.C. §§ 1402(a), 1403. The plan becomes effective after the passage of a specified amount of time, unless Congress affirmatively disapproves it by joint resolution. 25 U.S.C. § 1405.

The Secretary's distribution plan for Docket 275 was submitted to Congress by letter dated April 3, 1978. The plan became effective on June 15, 1978, with notice published at 43 Fed. Reg. 34214 (Aug. 3, 1978). ^{1/}

The Secretary's distribution plan for Docket 272 was submitted to Congress by letter dated August 12, 1983. The plan became effective on January 25, 1984, with notice published at 49 Fed. Reg. 7301 (Feb. 28, 1984).

According to Appellant, she found Willard's and Robert's names on a website maintained by the Office of the Special Trustee (OST), Department of the Interior. Both individuals were listed as persons whose whereabouts were unknown. It appears from the documents in the administrative record that Appellant began making inquiries concerning Willard and Robert in 1999. Appellant states that she initially contacted OST about these individuals, but was referred to BIA. She informed BIA that Willard had died on November 29, 1974, and that Robert had died on January 6, 1973. Apparently believing that Willard and Robert were entitled to per capita shares from Dockets 272 and 275, and that the shares would be in their estates, she asked BIA to initiate probate of their estates.

In response to Appellant's inquiries and request, the Regional Director issued the decision under review here. He held that, because both Willard and Robert were deceased when the distribution plans for Dockets 272 and 275 became effective, neither was eligible for a per capita share of the judgments.

Appellant appealed this decision to the Board. Although advised that she could file a brief and that she had the burden of proving the error in the Regional Director's decision, Appellant filed nothing other than her notice of appeal. The Regional Director filed an answer brief arguing alternatively that the appeal should be dismissed because Appellant did not carry her burden of proof or that his decision should be upheld on the merits.

Appellant's notice of appeal does not allege any error in the Regional Director's decision. She does not dispute the dates of death given for Willard and Robert; challenge the applicability of the Judgment Funds Act; or contend that Willard and Robert were entitled to per capita shares despite the fact that they were deceased when the plans became effective. Her notice of appeal consists entirely of generalized complaints against OST and BIA.

The Board has consistently held that an appellant who makes no allegation of error, let alone any arguments in support of such an allegation, has not carried her burden of proof. See,

^{1/} The judgment was entered and funds were appropriated in Docket 275 prior to the enactment of the Judgment Funds Act. Application of the Act to Docket 275 was mandated by 25 U.S.C. § 1402 (1976).

