



INTERIOR BOARD OF INDIAN APPEALS

Stephanie McClure v. Acting Muskogee Area Director, Bureau of Indian Affairs

27 IBIA 154 (02/03/1995)

Reconsideration denied:

27 IBIA 188 (02/28/1995)



# United States Department of the Interior

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

STEPHANIE McCLURE, : Order Dismissing Appeal  
Appellant :  
 :  
v. :  
 :  
 : Docket No. IBIA 94-149-A  
ACTING MUSKOGEE AREA DIRECTOR, :  
BUREAU OF INDIAN AFFAIRS, :  
Appellee : February 3, 1995

Appellant Stephanie McClure appealed from a June 7, 1994, letter written by the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning her application for a certificate of degree of Indian blood (CDIB). For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal for lack of jurisdiction.

Appellant applied for a CDIB, alleging that her ancestor, Sarah Ellen Williams, and Cherokee Enrollee Sarah Williams, Roll No. 31235, were the same person. The Registrar's Office of the Cherokee Nation of Oklahoma (Nation) examined the records appellant submitted in support of her application. In a detailed letter dated August 25, 1993, the Registrar concluded that appellant's assertion was not supported by the facts, and declined to issue the requested CDIB. The Registrar informed appellant that she could appeal the decision under 25 CFR Part 62.

Appellant appealed to the Area Director and submitted additional documents supporting her application. By letter dated February 16, 1994, the Area Director concurred in the Nation's decision, noting that he had considered both the initial information provided to the Nation and the additional information provided on appeal. The Area Director ended his letter with the sentence: "This decision is based on the exercise of authority delegated to me by the Secretary of the Interior and is **final** for the Department" (emphasis in original).

Appellant continued to protest the adverse decision. In a March 2, 1994, letter, the Nation's Registrar repeated that the Area Director's decision was final. That letter ended with a statement that appellant could appeal under 25 CFR Part 62.

Appellant again appealed to the Area Director. In a June 7, 1994, letter, the Area Director declined to change his decision and repeated that his decision was final for the Department. This time, however, he informed appellant that his decision could be appealed to the Board.

Appellant appealed to the Board, submitting additional documentary evidence, but not objecting to the Area Director's two statements that his decision was final for the Department.

Authority relating to enrollment and CDIB decisions is set forth in 25 CFR Part 62. 25 CFR 62.4(a) provides: "A person who is the subject of an adverse enrollment action may file \* \* \* an appeal. An adverse enrollment action is: \* \* \* (6) The certificate of degree of Indian blood by a [BIA] official which affects an individual."

Section 62.10 sets out appeal procedures for adverse enrollment decisions. It states:

(a) Except as provided in paragraph (c) of this section, when an appeal is from an adverse enrollment action taken by a Superintendent or tribal committee, the [Area] Director will consider the record as presented together with such additional information as may be considered pertinent. \* \* \* The [Area] Director shall make a decision on the appeal which shall be final for the Department and which shall so state in the decision. \* \* \* Provided that, the [Area] Director may waive his/her authority to make a final decision and forward the appeal to the Assistant Secretary for final action.

(b) When an appeal is from an adverse enrollment action taken by [an Area] Director, the [Area] Director shall acknowledge in writing receipt of the appeal and shall forward the appeal to the Assistant Secretary for final action \* \* \*.

(c) The [Area] Director shall forward the appeal to the Assistant Secretary for final action \* \* \* when the adverse enrollment action which is being appealed is either:

(1) The change in degree of Indian blood by a tribal committee which affects a tribal member and the tribal governing document provides for an appeal of the action to the Secretary; or

(2) The change in degree of Indian blood by a [BIA] official which affects an individual.

Under 25 CFR 62.10 (a) and (b), if the initial decision is made by a Superintendent or tribal committee, the decision may be appealed to the Area Director, whose decision is final for the Department without further review; if the initial decision is made by the Area Director, it may be appealed to the Assistant Secretary. Only those decisions relating to changes in a previously determined degree of Indian blood fall under the exception in 25 CFR 62.10(c).

The Nation has a Self-Governance compact under which it performs, *inter alia*, CDIB functions. Williams v. Acting Muskogee Area Director, 26 IBIA 217 (1994). In the context of this appeal, a CDIB decision made by the Nation is equivalent to a Superintendent's decision. Under 25 CFR 62.10(a), a Superintendent's decision may be appealed to the Area Director. Appellant appealed to the Area Director, who concurred in the Nation's decision. As required by the regulations, the Area Director informed appellant that his decision was final for the Department.

Perhaps because of appellant's persistence in requesting a further appeal despite being told that the decision was final for the Department, the Area Director gave appellant information relating to appeals to the Board. However, the question before the Board is whether the Area Director's statement that his decision was final for the Department is correct.

The Board agrees with the Area Director's statement that his decision was final under 25 CFR 62.10(a). The Board lacks jurisdiction to review a BIA decision that is final for the Department. Welch v. Minneapolis Area Director, 17 IBIA 56 (1989). Appellant has no more appeals within the Department. 1/ If she continues to disagree with the Area Director's decision, she may proceed to Federal court.

Therefore, 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 Acting Muskogee Area Director's February 16, 1994, and June 7, 1994, decisions is dismissed for lack of jurisdiction.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge

1/ Appellant obviously believes she has a right to appeal the merits of her application to Washington, D.C. This belief is undoubtedly based in part on an Oct. 19, 1993, letter to her from the Chief, Branch of Tribal Enrollment Services, BIA, Washington, D.C. The letter indicates that the Area Director would forward the appeal, with his recommendation, to Washington, D.C., for a final decision.

This was the procedure prior to August 1987 (see 25 CFR 62.7 (1986)), and would still be the procedure if appellant already had a CDIB and action was being taken to change her degree of blood (see 25 CFR 62.10(c)). However, Part 62 was amended in August 1987 with the specific intent to change the appeal procedures. The preamble to the Federal Register publication of the amended rule states:

“A significant procedural change has been included in the revision with regard to procedures BIA personnel will follow. On certain appeals filed from adverse actions taken by a \* \* \* BIA Superintendent, the decision of the BIA [Area] Director on the appeal will constitute final Departmental action. The BIA [Area] Director will not make a final decision for the Department, however, when the appealed adverse enrollment action is \* \* \* the change in degree of Indian blood by a BIA official which affects an individual. \* \* \* [F]inal Departmental action on blood degree changes subject to Secretarial review will be taken by the Assistant Secretary Indian Affairs.”

(52 FR 30159, 30160 (Aug. 13, 1987)).

The Oct. 19, 1993, letter appears to have been written either under a mistake of law as to the proper appeal procedures, or a mistake of fact as to the exact nature of appellant's appeal.