



INTERIOR BOARD OF INDIAN APPEALS

L.W. Yarberry Estate v. Acting Muskogee Area Director, Bureau of Indian Affairs

29 IBIA 81 (02/12/1996)



United States Department of the Interior

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

L.W. YARBERRY ESTATE,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	Docket No. IBIA 95-156-A
	:	
ACTING MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 12, 1996

Appellant F.W. Yarberry Estate sought review of a July 17, 1995, decision issued by the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), holding that Oil and Gas Lease No. 601-42505 (58968), Annie Lula Burris now Nelson, NB-534, had expired for failure to produce oil and/or gas in paying quantities. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

The notice of appeal in this case states in its entirety:

I would like to appeal the decision to terminate the lease as stated in the letter I received on 7/18/95.

I need additional time to address the possibility of increasing production. I believe a 90 to 120 day time frame would be sufficient to accomplish this task.

If this is not possible, the well could be plugged. However, I do not feel that this would be of any benefit to any of the interested parties.

In its August 15, 1995, predicated notice the Board stated that appellant might be seeking to settle this dispute, and gave appellant until September 20, 1995, in which to contact the Area Director about settlement. The Board spoke with the Area Office on September 22 and 25, 1995, and was informed that appellant had not initiated settlement discussions.

Accordingly, the Board issued a notice of docketing for this appeal on September 26, 1995. The notice informed appellant of its right to file an opening brief and advised it that it bore the burden of proving error in the decision being appealed.

Appellant did not file an opening brief or other statement.

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. Appellant has not carried 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 Acting Muskogee Area Director's July 17, 1995, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge