INTERIOR BOARD OF INDIAN APPEALS

Donald Hankins v. Acting Billings Area Director, Bureau of Indian Affairs

29 IBIA 283 (08/19/1996)

United States Department of the Interior

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

DONALD HANKINS,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	Docket No. IBIA 96-10-A
	:	
ACTING BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 19, 1996

On October 19, 1995, the Board of Indian Appeals (Board) received a notice of appeal from appellant Donald Hankins, who sought review of a September 19, 1995, decision issued by the Acting Billings Area Director, Bureau of Indian Affairs (Area Director). The Area Director's decision concerned a lease of trust property on the Wind River Reservation and ownership of a Housing Improvement Program house on the leasehold. For the reasons discussed below, the Board affirms that decision.

On November 27, 1995, the Board received a one-page list of appellant's reasons for appealing. The list did not show serve on other parties.

After receiving the administrative record, the Board issued a notice of docketing on January 11, 1996. Concerning appellant's list of reasons, the notice stated at page 1:

> Appellant is advised that the Board's regulations allow him to file an additional opening brief. If appellant intends to rely on the information he has already presented, he must serve copies of his November 11, 1995, list of reasons on the parties shown on the Board's distribution list. Alternatively, appellant may file an opening brief within 30 days from receipt of this notice of docketing. Any opening brief must also be served on other parties. <u>The Board will not consider any document not served on other parties</u>. Appellant is further advised that he bears the burden of proving the error in the decision being appealed. [Emphasis in original.]

The Board has not received either an opening brief or a statement from appellant that he served his November 11, 1995, document on other parties.

It is an elementary aspect of due process that persons who might be adversely affected by a change in a decision have the right to be informed of the filing of an appeal and of the arguments being made against the decision under appeal. The Board's regulations specifically require the service of all documents filed with it on opposing parties. 43 CFR 4.311. A copy of these regulations was sent to appellant with the Board's October 23, 1995,

pre-docketing notice. In the Board's January 11, 1996, notice of docketing, appellant was specifically advised of the requirement to serve opposing parties and of the consequences of a failure to show service.

Under the circumstances present here, the Board can consider only appellant's notice of appeal. That document states in its entirety:

> COMES NOW the Appellant, DONALD HANKINS, and hereby files with the Interior Board of Indian Appeals this Notice of Appeal in accordance with the regulations in 43 CFR 4.340.
>
> A complete list of reasons, and further evidence will be listed in a forthcoming letter.

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 an Area Director's decision is in error, let alone any argument in support of such an allegation, has/not carried his burden of proof. See, e.g., L.W. Yarberry Estate v. Acting Muskogee Area Director, 29 IBIA 81 (1996), and cases cited therein. Appellant has not carried his 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 Billings Area Director's September 19, 1995, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge