



INTERIOR BOARD OF INDIAN APPEALS

Wesley W. Allison v. Acting Superintendent, Eastern Nevada Field Office,  
Bureau of Indian Affairs

39 IBIA 71 (06/16/2003)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

WESLEY W. ALLISON, Appellant	:	Order Docketing and Dismissing
	:	Appeal for Lack of Jurisdiction
	:	
v.	:	
	:	
ACTING SUPERINTENDENT, EASTERN NEVADA FIELD OFFICE, BUREAU OF INDIAN AFFAIRS, Appellee	:	Docket No. IBIA 03-89-A
	:	
	:	June 16, 2003

Appellant Wesley W. Allison seeks review of an April 11, 2003, decision issued by the Acting Superintendent, Eastern Nevada Field Office, Bureau of Indian Affairs (Superintendent; BIA). The decision relates to the denial of a petition submitted to BIA requesting a Secretarial election to amend the Constitution of the Ely Shoshone Tribe. The Board of Indian Appeals (Board) docketed this appeal but, for the reasons discussed below, dismisses it for lack of jurisdiction.

The Superintendent's decision notified Appellant that he could appeal the decision to the Board under 25 C.F.R. Part 2. However, petitions to amend a tribal constitution are governed by 25 C.F.R. Part 82. As the Board discussed in Split Family Support Group v. Northwest Regional Director, 36 IBIA 5 (2001), 25 C.F.R. § 82.10 sets out appeal procedures applicable to decisions issued under Part 82. The Board is not part of that review process.

By order dated May 6, 2003, the Board gave the parties in this matter an opportunity to discuss this appeal in regard to the decision in Split Family Support Group. The Board has received responses from Appellant; the Western Regional Director, BIA; and the Ely Shoshone Tribe. Appellant argues that the Board has jurisdiction; both the Regional Director and the Tribe contend that it does not.

It appears that there was some confusion in this case because the individual who was acting as Superintendent was unfamiliar with Part 82, and therefore sought assistance from BIA's Western Regional Office. There was apparently concern that Appellant be given an opportunity to have the Superintendent's decision reviewed by a forum that had not been involved in the Superintendent's consideration of the petition. However, section 82.10 describes the procedures that are to be followed in reviewing petitions for Secretarial elections. As the Board held in Split Family Support Group, it is not part of that review process. The

fact that the Superintendent stated that Appellant could appeal to the Board does not give the Board jurisdiction that it does not have under the regulations.

It appears here that Appellant has received the review to which he was entitled under 25 C.F.R. § 82.10(b) through the involvement of the Regional Office in the Superintendent's decision. However, should Appellant object to the procedures followed, or believe that he might obtain a different decision from the Regional Director, he may request the Regional Director to issue a decision under 25 C.F.R. § 2.8. Otherwise, Appellant may continue to work on his petition for Secretarial election in order to obtain the requisite number of signatures.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Superintendent's April 11, 2003, decision is docketed, but dismissed for lack of jurisdiction.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Kathleen R. Supernaw  
Acting Administrative Judge