



INTERIOR BOARD OF INDIAN APPEALS

Effie Delmar v. Acting Navajo Regional Director, Bureau of Indian Affairs

40 IBIA 184 (01/03/2005)



# 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

EFFIE DELMAR,	:	Order Docketing and Dismissing Appeal
Appellant,	:	and Referring Appeal to the Director,
	:	Office of Hearings and Appeals
v.	:	
	:	
ACTING NAVAJO REGIONAL	:	Docket No. IBIA 05-30-A
DIRECTOR, BUREAU OF	:	
INDIAN AFFAIRS,	:	
Appellee.	:	January 3, 2005

On December 14, 2004, the Board of Indian Appeals (Board) received a notice of appeal from Appellant Effie Delmar, pro se. Appellant seeks review of a decision issued on September 10, 2004, by the Acting Navajo Regional Director, Bureau of Indian Affairs (Regional Director; BIA), providing her with notification that BIA is terminating her Quarters Assignment Agreement for Government-owned Quarters No. 3140, located at the Crownpoint Community School in Crownpoint, New Mexico. For the reasons discussed below, the Board docketed this appeal, but dismisses it for lack of jurisdiction. The Board refers the matter to the Director, Office of Hearings and Appeals.

Section 4.330(a) of 43 C.F.R. defines the scope of the Board’s jurisdiction as encompassing appeals to the Board “from administrative actions or decision of officials of the Bureau of Indian Affairs issued under regulations in 25 CFR chapter 1, and \* \* \* administrative review by the Board of Indian Appeals of other matters pertaining to Indians which are referred to it for exercise of review authority of the Secretary or the Assistant Secretary - Indian Affairs.” Appellant’s complaint is a government-furnished quarters matter which does not fall under either of the two categories of cases described in 43 C.F.R. § 4.330.

As stated in 41 C.F.R. § 114-51.100, “the Departmental Quarters Handbook (DQH) 400 DM [Departmental Manual] \* \* \* provides detailed guidelines governing administration, management and rental rate establishment activities relating to Government furnished quarters (GFQ).” Chapter 17 of 400 DM states that “[e]mployee-tenants have the right to contest any aspect of the quarters management \* \* \* processes.” 400 DM § 17.4; see In the Matter of Joseph Bentham, 12 OHA 96 (1996). However, the Departmental Manual notes that an appeal must be made by the employee-tenant to the Office of Hearings and Appeals. 400 DM

§ 17.4 B. Under 43 C.F.R. Subpart G, appeals to the Office of Hearings and Appeals are to be filed with the Director, Office of Hearings and Appeals.

The Board expresses no opinion whether the Office of Hearings and Appeals has jurisdiction over this appeal, but merely concludes that the Board of Indian Appeals, where Appellant filed her appeal, lacks jurisdiction to decide this appeal.

Section 17.4 of 400 DM requires that “Bureaus must ensure that employee-tenants are aware of their rights and the procedures for exercising these rights.” BIA’s failure to provide Appellant with specific appeal instructions appears to have resulted in her inability to locate the appropriate office to review her appeal from the notification terminating her Quarters Assignment Agreement. This problem could have easily been avoided if the termination notification had contained specific information notifying Appellant of the proper official with whom to file a request for administrative review. See Neuman v. Assistant Secretary - Indian Affairs, 27 IBIA 61, 62 (1994).

Therefore, pursuant to the authority delegated to the Board by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed, but dismissed for lack of jurisdiction. The appeal is hereby referred to the Director, Office of Hearings and Appeals, for appropriate consideration.

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// original signed  
Colette J. Winston  
Administrative Judge

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// original signed  
Anita Vogt  
Senior Administrative Judge