

ALFRED STEINHAUER

Decided October 12, 1971

IBLA 70-41 (Supp.) : Group No. 273, Oregon

: Petition for reconsideration

: Denied

ORDER

Alfred Steinhauer has filed a petition for reconsideration of the decision in Alfred Steinhauer, 1 IBLA 167 (1970). After careful consideration, we conclude that the points raised by him are without merit. Therefore, the petition is denied, and the decision will remain the final action of the Department.

Martin Ritvo, Member

I concur:

Edward W. Stuebing, Member.

Anne P. Lewis, Member dissenting.

For the reasons stated below, I am reversing my original position in the instant case. I would grant appellant's motion for reconsideration and would direct that a hearing be held on the issues.

According to appellant, property lines which have been relied on for some 80 to 90 years have been changed by the rulings made herein. In my opinion, property rights of the appellant are affected.

There is a substantial difference between the facts asserted by appellant and those relied upon by the Division of Cadastral Survey, Bureau of Land Management. In his motion for reconsideration, Mr. Steinhauer states:

Your decision seems to be based on two points which are not fact. 1. It is stated that there was careless logging in this section before the 1910 fires. This is simply not so. This logging took place five years before the fires, and less than 25 years after the 1881 survey. A member of the 1881 survey crew assisted in running the lines. Herman Steinhauer at that time owned 160 acres and the O & C people owned the rest of the section. O & C had a ranger by the name of Bruce constantly checking on the property lines and the loggers. Herman set black walnut trees and fence posts at the corners of his 160 acres, and showed me the corners after I came from Iowa in 1912. 2. The lines around my homestead - NW 1/4 of Section 3 was run by an inexperienced layman. Again, this is not the fact. Ed Kirby, head ranger in charge of the Mapleton office of the United States Forest Service, ran the lines in the early 1930s. He started at the accepted center point on the East side of Section 3; went west 1/2 mile reaffirming two of the monuments Herman Steinhauer had put up; then went North 1/2 mile setting a stake at the township line; and then went West to the accepted NW corner of Section 3. He missed the corner by inches, but I did not consider him inexperienced. Then he checked directions on the West side of the homestead - the Section line - coming out at, or rather on, an old fence that was built about 1910 by a settler in Section 4 as a line fence. This is the same fence that the cadastral surveyors found in 1960 when they ran a random line due South from the same NW corner of Section 3. Both groups of surveyors were following the field notes of the 1881 original survey.

I further note that appellant requested a hearing in this case. Thus in his letter of April 21, 1969, to the Chief, Cadastral Survey, he wrote:

We applied thru your office for a hearing with the Secretary of the Interior regarding the resurvey of Sec. 3, T. 17 S., R. 8W., Willamette Meridian, Oregon. To date we have received no word as to whether a hearing has been granted, or when, or where.

In United States v. Keith V. O'Leary, et al., A-27260 (September 28, 1956), the Secretary stated at page 344:

. . . it has long been recognized . . . that an equitable or legal claim to property against the United States may not be invalidated except in accordance with the requirements of due process of law.

Recently this Board granted a hearing in a case involving a survey by the Division of Cadastral Survey. See Tomalino, Joseph J., August Sobotka, et al., Case No. IBLA 70-40, now pending.

The Board, under regulation 43 CFR 4.415, 36 F.R. 7200 (1971), has the power to grant a hearing. 1/

---

1/ 43 CFR 4.415 reads:

"Either an appellant or an adverse party may, if he desires a hearing to present evidence on an issue of fact, request that the case be assigned to an examiner for such a hearing. Such a request must be made in writing and filed with the Board within 30 days after answer is due and a copy of the request should be served on the opposing party in the case. The allowance of a request for hearing is within the discretion of the Board, and the Board may, on its own motion, refer any case to an examiner for a hearing on an issue of fact. If a hearing is ordered, the Board will specify the issues upon which the hearing is to be held and the hearing will be held in accordance with §§ 4.430 to 4.439, and the general rules in Subpart B of this part.

In all the circumstances herein, the fact that, in effect, a claim to property is being invalidated, that there is a serious dispute as to the pertinent facts, and that this Board is empowered to grant hearings where they are necessary to an individual's receiving due process, I would grant a hearing in the present case. 2/

Anne Poindexter Lewis, Member

---

2/ The Board rejected a dependent resurvey in The Coast Indian Community, 3 IBLA 285 (1971).

4 IBLA 52

