

Editor's note: Reconsideration granted; decision vacated -- See Nora E. Konukpeok (On Reconsideration), 60 IBLA 394 (Dec. 23, 1981)

NORA E. KONUKPEOK

IBLA 75-444

Decided December 16, 1975

Appeal from the rejection of Native Allotment application AA-7053.

Affirmed.

1. Alaska: Native Allotments

Where a field examination reveals substantial use and occupancy by persons other than the claimant, a decision rejecting a Native allotment application will be affirmed.

APPEARANCES: Alaska Legal Services Corporation, for the appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

By its decision of May 14, 1975, the Alaska State Office of the Bureau of Land Management, rejected appellant's application for a Native allotment of 160 acres, filed pursuant to the Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 to 270-3 (1970). The reasons stated in the decision were:

- (1) Appellant was but 12 years of age in 1962 when she claims to have initiated her "substantially continuous use and occupancy" of the land. See 43 CFR 2561.0-5(a).
- (2) By her own admission her use of the land was discontinued from 1966 to 1970 when she attended high school.
- (3) An examination of the subject land in 1973 revealed substantial use of the land over a number of years by persons other than the applicant. The land was also occupied by a number of improvements and items of personal property which did not belong to the applicant.

Appellant has not availed herself of the several opportunities which have been afforded her to deny or otherwise respond to these findings.

We conclude, without reference to the other reasons cited in the State Office decision, that the land is in fact used, occupied and improved by another person or persons. We find, therefore, that the applicant has not qualified under the requirements of the Act, supra, and the regulations. 43 CFR Subpart 2561.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

