

Editor's note: Reconsideration granted, decision vacated -- See David E. Stevens (On Reconsideration), 64 IBLA 72 (May 10, 1982)

DAVID E. STEVENS

IBLA 75-353

Decided January 8, 1976

Appeal from decision of the Fairbanks District Office, Bureau of Land Management, rejecting Native allotment application F-14313.

Affirmed.

1. Administrative Practice--Alaska: Native Allotments--Rules of Practice: Appeals: Generally

Where the record of a Native allotment application at the time of adjudication shows that rejection would be proper, appellant will not be allowed on appeal to submit data which might warrant a different result, absent a clear and convincing showing explaining why the information was not afforded to the Bureau of Land Management when appellant was called upon for such data.

APPEARANCES: E. John Athens, Jr., Esq., Alaska Legal Services Corporation, Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

David E. Stevens has appealed from a decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated January 21, 1975, which rejected his Native allotment application F-14313, inter alia, because he had not shown use and occupancy of the tract for 5 years preceding the segregation of the land on January 9, 1963, by the filing of the withdrawal application for the Rampart Canyon Dam Project.

That withdrawal application culminated in Public Land Order 3520, 30 F.R. 271 (1965), classifying the land as within Powersite Classification No. 445. In Herman Joseph, 21 IBLA 199 (1975), we held that an applicant under the Native Allotment Act, 43 U.S.C. §§ 270-1 to 270-3 (1970), was required to show 5 years of use and occupancy before the segregation of the land for power purposes, in order to meet the requirements of law.

Appellant's application, filed February 9, 1971, stated that he commenced occupancy of the land on November 1, 1958. On May 8, 1974, BLM issued a decision to appellant reciting in part as follows:

If actual occupancy of the land applied for began before January 9, 1958, the applicant has thirty (30) days from receipt of this notice to submit additional satisfactory and convincing evidence of substantial use and occupancy to this office. In addition, the applicant must explain why the earlier date of occupancy now claimed was not shown on the original application. Failure to submit the required information will leave the Bureau no alternative but to issue a decision rejecting the Native Allotment Application and Evidence of Occupancy.

By letter of May 29, 1974, William H. Timme, General Counsel, Doyon Limited, requested an extension of time to comply with the decision of May 8, 1974. BLM granted an extension for that purpose until July 9, 1974.

On September 4, 1974, BLM again wrote the appellant apprising him that he was allowed an additional 60 days from service of notice to file the data requested by the decision of May 8, 1974.

By memo of November 7, 1974, the Superintendent, Bureau of Indian Affairs, requested on appellant's behalf, inter alia, a further extension of time to comply with the decision of May 8, 1974. A final date of January 10, 1975, was established for the submission of the required data. No such data was submitted by appellant and the application was rejected by decision of January 21, 1975.

On February 7, 1975, appellant filed a notice of appeal stating in part:

Although I originally said that I began using the land in November 1958, I actually used it for a long time before. I grew up there with my grandmother and first started using the land by myself in 1955. I put down 1958 because I was just guessing.

[1] On September 24, 1975, the Chief Administrative Judge of the Board informed appellant's counsel in part as follows:

5. Where new evidence has been submitted with the statements of reasons already filed, the Board hereby grants until November 3, 1975, or 60 days from the filing of the notice of appeal, whichever is longer, in which to explain why the evidence was not submitted to BLM prior to its decision. Any future offers of evidence must be accompanied by such showing. In the absence of such showing, newly offered evidence will not be favorably considered by the Board.

Such a showing has not been made. See Anuska Tugatuk, 23 IBLA 182 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision rejecting the Native allotment application is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

