

LINDA L. WALKER

IBLA 76-77

Decided January 14, 1976

Appeal from decision of Alaska State Office, Bureau of Land Management, rejecting Native allotment application F-17090 (Anch.).

Reversed and remanded with instructions.

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

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from rejection of a Native allotment satisfactory to it why the evidence was not submitted to the Bureau of Land Management within the 60-day period afforded the applicant to submit a further evidence in support of his application. General, rather than specific, allegations of difficulties in travel and communicating in Alaska are not satisfactory showings of the reason for late filing of such evidence.

2. Alaska: Native Allotments

A field examination of a land claimed for a Native allotment is not sufficiently thorough where the field examiner reveals in his report that only a portion of the parcel was actually examined for evidence of use and occupancy.

APPEARANCES: John S. Levi, Esq., Alaska Legal Services Corp., for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Linda L. Walker appeals from the June 25, 1975, decision of the Alaska State Office, Bureau of Land Management, rejecting her

Native allotment application F-17090 (Anch.). The application was filed pursuant to the provisions of the Alaska Native Allotment Act, 34 Stat. 197, as amended, 43 U.S.C. §§ 270-1 to 270-3 (1970). ^{1/} On July 12, 1974, appellant was notified that an examination of her parcel would be conducted in the very near future. She was given the opportunity to accompany the field examiner to enable her to point out evidence of use and occupancy. Alternatively, she could appoint a representative to go for her, or failing that, the village council would be asked to name someone to go with the examiner. It is not clear whether appellant appointed her representative or whether he was chosen by the village council. Nevertheless, Moses Edwards, the village coordinator, did accompany the field examiner when the parcel was examined. The field report states:

The subject property is located about 12 miles west of Holy Cross on the Koserefski River. It was identified by Moses Edwards, the representative of the applicant and coordinator for the village.

Some cut stumps were seen along the riverbank and a few small tied branches lay along the shore. No other evidence was seen. The claimed uses were for fishing, trapping, and hunting since 1965. Mr. Edwards could not contribute any knowledge of a tent campsite. Perhaps the applicant pitched a tent on a distant part of the parcel. No sign remained along the river. (Emphasis added.)

The resource possibility was good for the claimed uses. Both bear and wolf were seen nearby the same day of the visit. As the Native way of subsistence living, a large area around a campsite is used for hunting and trapping depending on travel conditions before or after freezeup.

In summary, the known traditional and seasonal subsistence activities, obvious resource potential, physical evidence of logging along the river, and adjacent land use by family members indicates the applicant may have had partial use as applied for. However, there was no physical evidence of improvements on the land to show substantial use by the applicant.

^{1/} The Alaska Native Allotment Act was repealed by section 18 of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. § 1617 (Supp. III, 1973), but applications pending in the Department at that time could be processed.

On March 28, 1975, the BLM notified appellant that the field examiner's report showed no evidence of use and occupancy of the parcel. Appellant was given 60 days to supply additional information of evidence of her use and occupancy, failing which her application would be rejected. On June 25, 1975, the BLM rejected her application as no additional evidence had been supplied. On June 26, 1975, the BLM received four affidavits of others stating that appellant had occupied the land since 1955. Subsequently, an appeal was filed with this Board.

[1] In a letter dated September 24, 1975, and addressed to the Alaska Legal Services Corporation, Chief Administrative Judge Frishberg stated:

The Board will not give favorable consideration to new or additional evidence submitted with an appeal in the absence of a showing satisfactory to it why the evidence was not submitted to BLM within the 60-day period afforded the applicant to submit a further showing in support of his application.

It is the general practice of the Board not to consider new evidence submitted on appeal in resolving a matter on its merits, but to remand the case to BLM for further consideration where such new evidence, if true, might change the outcome. It was precisely to enable applicants to submit such new evidence at the proper level that BLM provided an additional 60 days and longer before making its decision in each case. To remand cases to BLM upon the basis of new evidence submitted to the Board for the first time, after the extensive opportunities granted below, would negate the purpose for providing those opportunities and result in endless, undue delays.

Where new evidence has been submitted with the statements of reason 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 a showing. In the absence of such showing, newly offered evidence will not be favorably considered by the Board.

Appellant has alleged in very general terms that the affidavits were late due to difficulties in transportation and communication.

Such general statements do not constitute a satisfactory explanation for the tardiness in filing the affidavits. As we stated in Louise Luke, 22 IBLA 388 (1975):

The special procedures followed by the Alaska State Office in giving advance notice to Native allotment applicants of deficiencies and affording extended periods for the submission of evidence before the application is rejected is predicated upon the Department's recognition of the fact that many such applicants and those with knowledge of their activities do reside in remote areas where problems of distance, climate, topography and access make it difficult to acquire and submit needed information within the time limits imposed on other classes of applicants, even in Alaska. Having thus made special provision to compensate for these factors at the Bureau level, we are not disposed to accept readily recitations of such difficulties to excuse a failure to submit additional evidence within the extended time afforded by the Bureau for doing so. * * *

We did consider the late filed information in the Luke case because it was pointed out that the witnesses lived in such a remote area that there was no mail service, no telephone service, no road access, and no regular air service. The only access was by snowmobile in winter or chartered aircraft. In this case, no such specific reasons have been offered. However, upon remand of this case to BLM, these statements may be considered for the purpose of readjudication.

[2] The field examination concluded that there was no evidence of the required use and occupancy of the tract in question. However, the field examiner's statements strongly imply that he investigated only that portion of the parcel along the river. As the examiner also stated that this was a good area for the uses alleged by the applicant and that appellant might well have occupied another part of the parcel, we believe the case should be remanded for a more thorough examination. We are cognizant that a representative of appellant accompanied the field examiner's inspection of the parcel. However, there is no indication that he was either appointed by appellant or had knowledge of the parcel. We do not suggest that an examiner needs to make an intensive investigation of every square foot of a parcel, but he should see enough to satisfy him that an applicant has probably not occupied any portion of the parcel before reaching that conclusion. He should not speculate that an applicant has not occupied the parcel unless he has viewed all portions of the tract where evidence of such use and occupancy might be found.

Two further points deserve consideration. First, there is no indication in the record of appellant's age. In order to determine whether appellant's use and occupancy qualifies pursuant to the Native Allotment Act, it is necessary to know her age. We note that the new witness statements refer to the applicant's use of the land in company with her father, mother, and grandmother. Second, the signature of appellant on the application bears scant resemblance to the writing of appellant in a handwritten letter submitted to the BLM. The Alaska State Office should require, on remand, that appellant submit an affidavit, properly authenticated, attesting that the signature on the application is her own and explaining the apparent discrepancy between that signature and the writing in her letter. See 43 CFR 2561.2.

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 reversed and remanded to the Alaska State Office, BLM, for action consistent with the views expressed herein.

Edward W. Stuebing
Administrative Judge

I concur:

Anne Poindexter Lewis
Administrative Judge

I dissent:

Joan B. Thompson
Administrative Judge

