

NORMA E. RICHARDS

IBLA 78-375

Decided October 17, 1979

Appeal from the partial rejection by the Alaska State Office, Bureau of Land Management, of Native allotment application, F-13112 (Anch.).

Affirmed as modified.

1. Alaska: Native Allotments

The filing of an acceptable application for a Native allotment segregates the lands designated in the application. The Bureau of Land Management properly rejects subsequent conflicting applications for such lands.

2. Alaska: Native Allotments

Where legal conclusions are reached upon undisputed facts and there has been no proffer of further facts which could compel different legal conclusions, an allotment application may be rejected as a matter of law subject to the right to appeal to this Board. Hearings under the rule enunciated in Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), are required only where there is a factual dispute.

3. Alaska: Native Allotments

Sec. 18(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (1976), repealed the Native Allotment Act of 1906, as amended, 43 U.S.C. §§ 270-1 to 270-3 (1970), except as to applications pending on the date of enactment, Dec. 18, 1971. Accordingly, the Board of Land Appeals has no authority to now permit the selection of lands for allotment.

APPEARANCES: John M. Holmes, Esq., Alaska Legal Services Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Norma Richards appeals the partial rejection of her Native allotment application, F-13112 (Anch.), filed pursuant to the Native Allotment Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 to 270-3 (1970) (repealed subject to pending applications, section 18(a), Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (1976)), and implementing regulations. The application was filed for two parcels of land identified as Parcels A and B. On February 14, 1978, the Alaska State Office, Bureau of Land Management (BLM), rejected the application as to Parcel A because there existed an earlier filed Native allotment application for the same land.

Parcel A covers approximately 80 acres of land described by metes and bounds and located primarily in the S 1/2 NW 1/4 sec. 18, T. 10 N., R. 1 W., Copper River meridian. In her application, appellant alleged use and occupancy beginning September 5, 1965, on Parcel A. On May 28, 1976, BLM notified appellant that Parcel A was in almost total conflict with Native allotment application, F-015452, filed by Frank Tyone on October 31, 1955, and that the BLM field examination had not substantiated her claim of use and occupancy. Appellant was then given 60 days to submit additional information to verify her claim but she did not do so. Frank Tyone claimed use and occupancy since 1940 of approximately 160 acres of land located at NW 1/4 sec. 18, T. 10 N., R. 1 W., Copper River meridian. Tyone's claim has since been verified by a BLM field examination and a plat of the allotment was filed officially on August 25, 1977.

[1] The pertinent regulation, 43 CFR 2561.1(e) states: "The filing of an acceptable application for a Native allotment will segregate the lands. Thereafter, subsequent conflicting applications for such lands shall be rejected \* \* \*." The record in this case indicates that Frank Tyone filed "an acceptable application." Accordingly, Parcel A has not been available for allotment since September 26, 1957, when the application was allowed, and, therefore, BLM properly rejected appellant's allotment application as to Parcel A.

[2] Appellant makes several arguments in her statement of reasons which we conclude do not raise any factual disputes and are not legally persuasive grounds for reversing the BLM decision. First, she notes that the Bureau of Indian Affairs (BIA) certified that her application did not conflict with any other Native claims. Unfortunately, the fact that BIA so certified, does not make it true in this case. The legal descriptions in each application place the claims in conflict. Furthermore, although BIA certification is required by the regulations, 1/ it is not determinative as to whether or not BLM

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1/ 43 CFR 2561.1(d).

should grant an allotment. Management and disposition of the Federal lands is a BLM responsibility. BLM must determine whether an applicant has met all of the requirements of law. See Elena Bartman, 43 IBLA 284 (1979).

Appellant also notes that her application refers to a particular cabin allegedly on Parcel A and argues that "departmental confusion regarding the legal description of her allotment led to the arbitrary -- and conjectural -- conclusion that her application did not encompass the area of the cabin." Where the cabin is located 2/ has no bearing on the reasons for the BLM decision. It is the legal descriptions of the land and the location of the allotments based on those descriptions which place the applications in conflict. Appellant makes no claims that the applications were not in conflict.

Where, as in this case, legal conclusions are reached upon undisputed facts and there has been no proffer of further facts which could compel different legal conclusions, an allotment application may be rejected as a matter of law subject to the right of appeal to this Board. Hearings under the rule enunciated in Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), are required only where there is a factual dispute. John Moore, 40 IBLA 321, 324 n.1, 86 I.D. 279, 280 n.1 (1979); Donald Peters, 26 IBLA 235, 241 n.1, 83 I.D. 308, 311 n.1, reaffirmed, Donald Peters (On Reconsideration), 28 IBLA 153, 83 I.D. 564 (1976).

We would note, however, that the decision of the Alaska State Office characterized Parcel A as "approximately 80 acres described as SW 1/4 NW 1/4 sec. 18." This description is obviously in error, since the SW 1/4 NW 1/4 would only aggregate 40 acres of land. The State Office informed this Board, in its transmittal of the case file, that the description should have read S 1/2 NW 1/4. Accordingly, we will modify the State Office decision to reject appellant's Native, allotment application for Parcel A to the extent of the conflict between that application and the application of Tyone.

[3] Finally appellant contends that if Parcel A is not granted to her, the Board, in fairness, should allow her to make a substitute selection. She argues that she "should not be penalized for the mistakes of the Department when she has complied fully with the requirements of the Act in making her selection." Initially, we must state that this Board has no authority to permit a new selection of land for allotment. The Alaska Native Claims Settlement Act, supra, repealed the Native Allotment Act of 1906, supra, except as to applications

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2/ The record indicates that the cabin is within the Tyone allotment area. If so, the problem with appellant's application would not be cured by including the cabin because that land was not available for allotment.

pending on the date of enactment, December 18, 1971. The Board has held that Alaska Native allotment applications filed after that date must be rejected. Jessie Jim, 22 IBLA 54 (1975); George Ondola, 17 IBLA 363 (1974).

We have two other comments in response to appellant's argument. First, appellant has not alleged facts which would establish that the Department made mistakes which, if corrected, would change the outcome of this case. Second, assuming arguendo that appellant's use and occupancy was sufficient, she still would not have "complied fully with the requirements of the Act" because she filed for land not open to occupancy. A Native allotment applicant has the duty to check official BLM records before commencing occupancy to determine if the land is open. See Roselyn Isaac, 23 IBLA 124 (1975); Helen T. Smith, 15 IBLA 301, 302 (1974).

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 as modified.

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James L. Burski  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

