



INTERIOR BOARD OF INDIAN APPEALS

Junior W. Brown v. Muskogee Area Director, Bureau of Indian Affairs

19 IBIA 318 (04/18/1991)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

JUNIOR W. BROWN,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	
MUSKOGEE AREA DIRECTOR	:	Docket No. IBIA 91-69-A
and TALIHINA AGENCY	:	
SUPERINTENDENT, BUREAU OF	:	
INDIAN AFFAIRS,	:	
Appellees	:	April 18, 1991

On April 17, 1991, the Board of Indian Appeals received a notice of appeal and statement of reasons from Junior W. Brown, pro se. His statement of reasons states in its entirety:

[1]. I am filing an appeal with the Board of Indian Appeals because I do not agree with the decisions of the Area Director or the Superintendent of The Five Civilized Tribes.

[2]. The Government attorneys as well as private lawyers committed Legal Negligence in handling my case.

[3]. No one has informed me of my rights as far as Indian Law and Procedures. I am having to do this on my own. My former attorneys have refused to answer any questions or communicate with me in any way since my case was dismissed.

[4]. The Government is responsible for causing me damage in excess of \$50,000 due to the negligence of the attorneys in the Solicitors office. I am seeking damages of \$50,000 plus attorneys fees of \$5,000.

The documents submitted by appellant indicate that he is a Choctaw Indian and that he filed a claim under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680 (1988), on December 14, 1989, alleging that Department of the Interior attorneys breached their fiduciary duty to him by failing to notify him of his right to claim his inheritance during 1972 and 1975 probate proceedings for his uncle and mother. Following rejection of his claim by the Department, appellant filed suit in Federal district court. On November 15, 1990, the district court dismissed his claim as time barred. Brown v. United States, No. 90-267-S (E.D. Okla. Nov. 15, 1990).

By letters dated February 4 and 5, 1991, appellant requested the Muskogee Area Director and the Talihina Agency Superintendent, Bureau of Indian Affairs, to make changes in the estates of his uncle and mother, presumably to provide appellant with a share in the estates. Both officials responded that they were

bound by the decisions of the Oklahoma State courts in the two probates. See Area Director's February 28, 1991, letter; Superintendent's February 20, 1991, letter. In his request to the Area Director, appellant also sought attorneys fees, apparently with respect to his litigation in Federal court. The Area Director responded that appellant was not entitled to attorneys fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412 (1988) because he had not substantially prevailed in his suit. The Area Director stated further that he was aware of no other authority for the award of attorneys fees in appellant's situation.

Appellant appeals from the letters of the Area Director and the Superintendent, although he has apparently now abandoned his quest for alterations to the two estates in favor of a renewed claim for damages.

It is clear that, no matter what appellant's theory in this appeal may be, this Board lacks jurisdiction over it. The Board has no jurisdiction to award money damages. E.g., Kays v. Acting Muskogee Area Director, 18 IBIA 431 (1990). Even if it did have jurisdiction to award damages, the Board would be bound by the district court's decision in appellant's case.

If appellant were seeking in this appeal, as he was before the Area Director and the Superintendent, to obtain alterations to the estates of his uncle and mother, the Board would lack jurisdiction over the appeal because jurisdiction to probate the estates of members of the Five Civilized Tribes is vested in the Oklahoma State courts. Act of August 4, 1947, § 3, 61 Stat. 731, 732.

Since appellant is not represented by an attorney in this appeal, his request for attorneys fees may relate to his lawsuit in Federal court. If so, the Board lacks jurisdiction to consider the request because, under EAJA, jurisdiction to award attorneys fees in that case was vested in the United States District Court for the Eastern District of Oklahoma. 1/ 28 U.S.C. § 2412(d)(1)(B) (1988). It is also possible that appellant intends to hire an attorney and is therefore seeking attorneys fees for this appeal. However, even if appellant were represented by an attorney and were to prevail in this appeal, the Board would still lack authority to award attorneys fees under the provisions of EAJA relating to administrative adjudications, 5 U.S.C. § 504 (1988). Utu Utu Gwaitu Paiute Tribe v. Sacramento Area Director, 17 IBIA 141 (1989).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed under the above case name and number and dismissed for lack of jurisdiction.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

1/ Of course, as the Area Director recognized, the fact that appellant's lawsuit was dismissed as time barred would have precluded him from being awarded attorneys fees under EAJA even if he had filed a timely claim in the proper forum.