



INTERIOR BOARD OF INDIAN APPEALS

James F. Johnson v. Muskogee Area Director, Bureau of Indian Affairs

30 IBIA 38 (09/26/1996)



United States Department of the Interior

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

JAMES F. JOHNSON,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 96-118-A
MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	September 26, 1996

This is an appeal from an August 16, 1996, letter signed by the Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA). The letter concerned appellant's application for enrollment in the Muskogee (Creek) Nation (Nation) and his request to have his deceased grandmother, Jennie Johnson, added to the Nation's original membership roll.

On September 19, 1995, the Nation denied appellant's enrollment application because appellant was unable to trace his ancestry to an original enrolled member. Appellant attempted to appeal the denial to the Area Director. The Area Director's August 16, 1996, letter informed appellant that the Nation's decisions concerning enrollment were not appealable to BIA and that appellant should contact the Nation concerning its appeal procedures.

Apparently, appellant also asked the Area Director to add Jennie Johnson to the original roll of the Nation. The Area Director's August 16, 1996, letter stated that Jennie Johnson had been a petitioner in United States ex rel. Johnson v. Payne, 253 U.S. 209 (1920), and so was subject to the ruling in that case.

Upon receipt of appellant's notice of appeal, the Board issued an order to show cause, stating:

The Board does not have authority to review decisions made by tribal officials or tribal governing bodies. Therefore, it does not appear that the Board has jurisdiction over this appeal to the extent that appellant seeks review of the Nation's decision not to enroll him. Further, it appears that the matter of Jennie Johnson's enrollment in the Creek Nation was resolved in 1920.

Therefore, the Board ordered appellant to show why the Board should not dismiss this appeal for lack of jurisdiction. The Board informed appellant that, in his response, he should provide any information which he believed showed that this Board had authority to grant all or any part of the relief he requested.

Appellant's response states:

The Supreme Court of The United States did rule that the Secretary of The Interior did have the right to remove my grandmother (Jennie Johnson) from the Dawes Commission Rolls, without due Process. The Supreme Court did not rule to suspend Jennie Johnson's 5th amendment (nor be deprived of life, liberty, or Property, without due process of law;) rights. Once Jennie Johnson had been identified by a land no. (21218 Exhibit A) the Secretary of The Interior had in effect granted title to a Fee Simple Estate (Business Law, Uniform Commercial Code, 4th ed., Chapter 41). Did The Secretary of The Interior have the right to terminate title of a Fee Simple Estate without due process? Since the land no. (21218) and the Dawes Commission Rolls are related one to the other, how do you separate one from the other? I believe you have jurisdiction over this case.

Appellant's Exhibit A, attached to his response, is a copy of a March 4, 1907, letter from the Secretary of the Interior to the Commissioner to the Five Civilized Tribes. Appellant's reference to a "land no." is apparently based upon the first sentence of the Secretary's letter, which reads: "On March 2, 1907 (Land 21218), the Indian Office transmitted your report, dated February 27, 1907, with reference to the application of Jennie Johnson for the enrollment of herself and four minor children, Clarence, Fanny, Jennie Belle and Walter Johnson, as citizens of the Creek Nation."

The meaning of the parenthetical term "Land 21218" in this sentence is not clear from the context. Its location in the sentence, however, suggests that it is a file or correspondence number. This term does not appear anywhere else in the letter. Nor is there a discussion of land anywhere in the letter. Although the letter does not mention allotment, the Board assumes, for purposes of this order, that Jennie Johnson would have received an allotment of land had she been enrolled in the Nation.

The Secretary's March 4, 1907, letter stated that the Department had, on February 19, 1907, made an enrollment decision favorable to Jennie Johnson and her children. It further stated, however, that the February 19, 1907, decision was being rescinded and that, "[i]f these applicants have been placed upon the roll of citizens of the Creek Nation, their names are hereby cancelled from said roll."

This letter clearly appears to be the same March 4, 19,07, letter referred to in the Supreme Court's decision in Johnson v. Payne. The decision states:

This is a petition for a writ of mandamus to require the Secretary of the Interior to place the names of the petitioners upon the rolls of the members of the Creek Nation. * * * Rights as a member of the Nation depend upon the approved rolls. March 4, 1907, was fixed by statute as the time when the rolls were to be completed by the Secretary of the Interior and his previously existing jurisdiction to approve enrollment then ceased. Act of April 26, 1906, c. 1876, § 2, 34 Stat. 137, 138. Before that date, the petitioners had on file an application for enrollment, hearings had been had before the proper tribunal, a favorable

report had been made to the Secretary and the Secretary had written a letter to the Commissioner to the Five Civilized Tribes, saying, "Your decision is hereby affirmed." But on the last day, March 4, 1907, the Secretary addressed another communication to the same official rescinding the former letter to him, and reversing his decision. It was ordered that if the petitioners' names were on the rolls they should be stricken off. The Secretary gave no reasons for his action but it is suggested that he acted under mistakes of law and fact, and it is argued that when the first letter was written the petitioners' rights were fixed.

The last is the only point in the case and with regard to that it is argued that this reversal of the first decision with out a hearing was a denial of due process of law. It is not denied that the Secretary might have declined to affirm the decision below in the first instance, and that having been his power, the only question is when it came to an end. While the case was before him he was free to change his mind, and he might do so none the less that he had stated an opinion in favor of one side or the other. He did not lose his power to do the conclusive act, ordering and approving an enrollment, Garfield v. Goldsby, 211 U.S. 249, until the act was done. New Orleans v. Paine, 147 U.S. 261, 266. Kirk v. Olson, 245 U.S. 225, 228. The petitioners' names never were on the rolls. The Secretary was the final judge whether they should be, and they cannot be ordered to be put on now, upon a suggestion that the Secretary made a mistake or that he came very near to giving the petitioners the rights they claim.

253 U.S. at 210-11.

In his response to the Board's order, appellant appears to concede that the Supreme Court's decision is a final adjudication adverse to Jennie Johnson's enrollment application. Although his present argument is not entirely clear, he may be contending that, despite the Supreme Court's decision as to enrollment, Jennie Johnson should have received an allotment.

As the Supreme Court observed in Johnson v. Payne: "Rights as a member of the Nation depend upon the approved rolls." Because Jennie Johnson had no right to enrollment in the Nation, she also had no right to the benefits of enrollment in the Nation, such as an allotment. Thus, the decision in Johnson v. Payne is final as to Jennie Johnson's right to the benefits of enrollment, as well as to her right to enrollment per se. The Board has no authority to reopen a matter which has been decided by the Supreme Court. ^{1/}

^{1/} Even if the Supreme Court had not ruled on Jennie Johnson's enrollment application, this Department would still lack authority to add her to the roll at this time. As the Supreme Court noted in Johnson v. Payne, pursuant to the Act of Apr. 26, 1906, 34 Stat. 137, 138, the roll was closed on Mar. 4, 1907. Section 2 of that act provided that "the Secretary of the Interior shall have no jurisdiction to approve the enrollment of any person after said date." See also Cole v. Acting Muskogee Area Director, 23 IBIA 246 (1993).

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. It is, however, dismissed for lack of jurisdiction.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge