

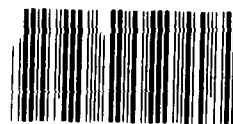
GAO

Fact Sheet for the Chairman, Committee
on Interior and Insular Affairs
United States Senate

June 1986

INDIAN AFFAIRS

Information on the Office of Hearings and Appeals' Indian Cases



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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

RESOURCES COMMUNITY
AND ECONOMIC DEVELOPMENT
DIVISION

June 30, 1986

B-222779

The Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives

Dear Mr. Chairman:

As requested in your February 11, 1986, letter and in subsequent discussions with your office, this fact sheet presents information on the Department of the Interior's Office of Hearings and Appeals' (OHA) Indian and non-Indian caseload for calendar years 1984 and 1985. The information represents new cases assigned to OHA's Contract, Indian, and Land Appeals Boards. Specifically, it includes the (1) total number of cases received by each OHA appeals board, (2) number of case closures and the average time to process a case, (3) number of cases subsequently appealed to federal court, and (4) type of and criteria for determining cases assigned to particular boards of appeal. The number of cases carried over into the 1984-85 period from previous years by each board is also presented. In order to assist in your analysis of the provided caseload data, we have also included the number of staff positions of each appeals board and OHA's operating funds for the 2-year period.

In summary, we found, for calendar years 1984-85 combined, that OHA's appeals boards had received a total of 2,470 cases, including 212 Indian cases. Of these, 2,055 cases were closed, including 152 Indian cases. A total of 34 cases, including 5 Indian cases, were subsequently appealed to federal court. OHA received total operating funds of about \$11.6 million for fiscal years 1984 and 1985, which supported between 37 and 41 judges and staff assigned to the appeals boards.

To develop the information included in this fact sheet, we obtained listings of all cases received by the Contract and Indian Appeals Boards between January 1, 1984, and December 31, 1985. Because of the large number of cases the Land Appeals Board receives, we obtained a summary of case information from the Board for the same period. Because of its cumulative record-keeping

methods (cases are not tracked by the year they are received), the Land Appeals Board could not provide the number of case closures or average processing time of new cases filed during 1984 and 1985 as we obtained for the Contract and Indian Appeals Boards. We obtained OHA budget and staffing information from the records of OHA's administrative office located in Arlington, Virginia. We verified the accuracy of the listings and summary by selectively reviewing a sample of 6 to 12 case files at each appeals board. We relied on a combination of the Interior Department's Organization Manual and other agency documents to describe the responsibilities and mission of each OHA organization discussed in the fact sheet. The information presented in this fact sheet was reviewed and agreed to by OHA's Director and Deputy Director and appeals board staffs as being accurate and complete for the respective review period.

We will send copies of this fact sheet to OHA and will make copies available to others on request. Should you need further information, please contact me on (202) 275-7756.

Sincerely yours,



Michael Gryszkowiec
Associate Director

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ABBREVIATIONS

GAO	General Accounting Office
OHA	Office of Hearings and Appeals
RCED	Resources, Community, and Economic Development Division

INFORMATION ON THE OFFICE OF HEARINGS
AND APPEALS' INDIAN CASES

BACKGROUND

The Office of Hearings and Appeals (OHA) was created in 1970 in order to put all of the quasi-judicial and appellate responsibilities of the Interior Department into one office. Interior's quasi-judicial and appellate responsibilities stem from the Secretary's authority to settle legal cases pertaining to public lands and their resources, including land selections arising under the Alaska Native Claims Settlement Act; surface mining; contract disputes; Bureau of Indian Affairs decisions; and Indian probate matters. OHA is headed by a director who exercises the delegated authority of the Secretary of the Interior over hearings and appeals matters. The director supervises all OHA activities including operations of the Hearings Division, comprised of Indian probate and departmental administrative law judges, and three designated boards of appeal--Contract, Indian, and Land.¹ OHA received operating funds of \$5,875,000 and \$5,716,000 for fiscal years 1984 and 1985, respectively, according to OHA's administrative officer.

Director's Office

The director may assume jurisdiction of or review any case or direct reconsideration of any decision by OHA's boards.² The director also considers and decides appeals to the Secretary that

¹The organization of the Office of Hearings and Appeals and the authority delegated by the Secretary to the Director and other principal officials of the Office are set forth in part 111, chapter 13, of the Departmental Manual; Release No. 1213 of July 17, 1970 (211 DM 13); and a notice published in the Federal Register on July 28, 1970, 35 FR 12081.

²Except the Board of Contract Appeals.

do not lie within the appellate review jurisdiction of an established board.³ These appeals are usually assigned to an ad hoc board of appeal (a temporary board composed of judges and staff assigned to one or more of the three standing boards of appeal) for review.

Hearings Division

The Hearings Division hears cases in the same manner that a trial court would hear a case, according to the OHA Director. The Indian probate administrative law judges conduct hearings and render decisions in Indian matters such as establishing the authority or validity of a will. They also, according to the OHA Director, occasionally hear agency personnel grievance appeals involving matters including employee suspensions (of 14 days or less) and reprimands. The departmental administrative law judges conduct hearings in all cases required by law to be conducted pursuant to 5 U.S.C. Section 554 and other cases arising in the Department. These cases, as described in Interior's fiscal year 1986 budget justification, include administrative, procedural, and other matters pertaining to numerous statutes, including the Mining Act of 1872, the Surface Mining Control and Reclamation Act of 1977, and the Endangered Species Act, according to the OHA Deputy Director.

Many of the Hearings Division's decisions are subsequently appealed to the Secretary, according to the OHA Director. It is the function of the boards of appeal to review these appeals for the Secretary.

³The review jurisdiction of each board is provided in subpart A of 43 CFR part 4.

Boards of Appeal

OHA's boards of appeal are delegated the authority to render the Interior Department's final decisions in the cases they consider. According to the OHA Director, new cases are generally considered in the order in which they are received, unless faster action is required by statute. OHA appeals board cases are generally closed by (1) board decision; (2) board dismissal based on an agreement between the parties, absence of review jurisdiction, the appellants' request, or review by the Secretary; and (3) board referral to other OHA boards or the Hearings Division.

Table I.1 shows that OHA received a total of 1,134 new cases (not including ad hoc cases) during 1984 and 1,336 in 1985, an increase of 202 cases or about 18 percent.

Table I.1: OHA Appeals Board Cases Assigned During Calendar Years 1984-85

<u>Appeals board</u>	<u>1984 cases^a</u>			<u>1985 cases^a</u>		
	<u>Indian</u>	<u>Non-Indian</u>	<u>Total</u>	<u>Indian</u>	<u>Non-Indian</u>	<u>Total</u>
Contract	21	119	140	62	152	214
Indian	60	-	60	58	-	58
Land	<u>5</u>	<u>929</u>	<u>934</u>	<u>6</u>	<u>1,058</u>	<u>1,064</u>
Total	<u>86</u>	<u>1,048</u>	<u>1,134</u>	<u>126</u>	<u>1,210</u>	<u>1,336</u>

^aThe year that the boards received the original document initiating an appeal. Reinstated cases (suspended cases that have been activated for continued processing) and requests for reconsiderations of case decisions (reconsideration of a decision may be granted only in extraordinary circumstances where, in the judgment of the director or an appeals board, sufficient reason appears, such as where a serious error occurred during the proceeding) are not included.

BOARD OF CONTRACT APPEALS

The Board of Contract Appeals conducts hearings and issues decisions required by the Contract Disputes Act of 1978 (Public Law 95-563), which provides for appeals relating to government contracts. According to the OHA Director, these contracts range from a few thousand dollars, for items such as fences and small dirt roads, to millions of dollars for dams, canals, and surfaced roads. The board also has jurisdiction to hear and decide such disputes arising from prior related regulations and legislation. As shown by table I.2, the board's new cases increased from 140 cases received during 1984 to 214 cases in 1985, an increase of 74 cases, or about 53 percent. The OHA Director noted in January 1986 that a very significant portion of the board's increased filings are appeals resulting from contract audits of Indian tribal contracts, as authorized by the Indian Self-determination and Education Assistance Act of 1975, Public Law 93-638 (25 U.S.C. 450). The act permits Indian tribes to assume control over Indian programs through contracts. Examples of contract audit appeals, according to an appeals board staff attorney, include disallowed costs related to Indian tribal contracts for supplies, services, and other needs. Indian contract appeals are assigned to the Board of Contract Appeals by 25 CFR 274.51. The Board of Contract Appeals had 124 cases (21 Indian) pending on December 31, 1983.⁴

⁴The number of cases pending include all cases filed during or prior to the calendar year as well as reinstated cases and reconsiderations of prior board decisions.

Table I.2: Contract Appeals Board Cases Assigned
During Calendar Years 1984-85

<u>Year</u>	<u>New cases</u>	<u>New case closures through 12-31-85</u>	<u>Average for new case closures^a (days)</u>	<u>New cases appealed^b</u>
1984				
Indian	21	8	237	0
Non-Indian	<u>119</u>	<u>98</u>	196	<u>1</u>
Total	<u>140</u>	<u>106</u>	202	<u>1</u>
1985				
Indian	62	51	40	0
Non-Indian	<u>152</u>	<u>82</u>	85	<u>0</u>
Total	<u>214</u>	<u>133</u>	72	<u>0</u>
Total	<u>354</u>	<u>239</u>	123	<u>1</u>

^aThe days between the case's assignment and closure dates (since the assignment of the Contract Board's cases were listed by month, we used the first day of the month as the day received).

^bAppeals board decisions submitted by the appellant to federal court for review.

BOARD OF INDIAN APPEALS

The Board of Indian Appeals decides appeals pertaining to administrative actions and decisions of officials of the Bureau of Indian Affairs that are protested as a violation of Indians' rights or privileges (except matters pertaining to the enrollment and leasing of Indian land for oil and gas exploration and production under regulations in 25 CFR part 2). In addition, the board decides Indian probate appeals (other than those involving estates of Indians from the Five Civilized Tribes and Osage Tribe) from decisions rendered by the Hearings Division. The board can

also decide other matters pertaining to Indians that are referred to it by the OHA Director. The new cases received by the board during 1984 and 1985 are shown in table I.3. The Indian Board of Appeals had 33 cases pending on January 1, 1984.

Table I.3: Indian Appeals Board Cases Assigned During Calendar Years 1984-85

<u>Year</u>	<u>New cases</u>	<u>New case closures through 12-31-85</u>	<u>Average for new case closures^a (days)</u>	<u>New cases appealed^b</u>
1984	60	57	254	5
1985	<u>58</u>	<u>28</u>	192	<u>0</u>
Total	<u>118</u>	<u>85</u>	224	<u>5</u>

^aThe days between the case's assignment and closure dates.

^bAppeals board decisions submitted by the appellant to federal court for review.

BOARD OF LAND APPEALS

The Board of Land Appeals decides appeals from decisions rendered by Interior officials relating to the use and disposition of public lands and their resources. These decisions, according to a Land Board legal assistant, include determinations to allow the commercial utilization of timber resources and the use and disposition of mineral resources in certain federally acquired lands and the submerged lands of the outer continental shelf, such as decisions to allow exploration for offshore oil and gas deposits. The Land Board hears and considers appeals to the Secretary of Interior from findings of fact and decisions by other Interior officials in matters relating to land selection

processes under the Alaska Native Claims Settlement Act (85 Stat. 688). According to a Land Board legal assistant, the board also exercises jurisdiction over matters, such as the mining methods and land reclamation requirements, coming within the review authority of the Secretary under the Surface Mining Control and Reclamation Act of 1977. Table I.4 shows the new cases received by the board during 1984 and 1985. According to a Land Board staff attorney, the board had 696 cases (3 Indian) pending on January 1, 1984.

Table I.4: Land Appeals Board Cases Assigned During Calendar Years 1984-85

<u>Year</u>	<u>New cases</u>	<u>New case closures through 12-31-85</u>	<u>Average for new case closures^a (days)</u>	<u>New cases appealed^b</u>
1984				
Indian	5	3	c	0
Non-Indian	929	c	c	13
Total	<u>934</u>	<u>965^d</u>	-	<u>13</u>
1985				
Indian	6	5	c	0
Non-Indian	1,058	c	c	15
Total	<u>1,064</u>	<u>766^e</u>	-	<u>15</u>
Total	<u>1,998</u>	<u>1,731</u>	f	<u>28</u>

^aThe days between the case's assignment and closure dates.

^bAppeals board decisions submitted by the appellant to federal court for review.

^cNot available.

^dMay include cases received before 1984.

^eMay include cases received before 1985.

^fThe Land Board of Appeals determined that 8.1 months was the cumulative average time for final case closures by the board from November 1981 through December 1985 and 10.5 months from January 1985 through December 1985.

OHA STAFFING

The OHA staff positions (filled) for each of the three appeals boards from January 1984 through December 1985 are presented in table I.5.

Table I.5: OHA Appeals Boards' Staff Positions^a

Appeals board	1984 positions			1985 positions		
	Judges	Staff	Total	Judges	Staff	Total
Contract	4	4	8	4	4	8
Indian	3	2	5	2-3 ^b	2	4-5
Land	9	17-19	26-28	8-9 ^c	17-19	25-28
Total	16	23-25	39-41	14-16	23-25	37-41

^aFull-time equivalent positions filled.

^bAccording to the OHA Director and Deputy Director, the number of Indian Appeals Board judges was reduced from three to two on September 30, 1985, as the result of a retirement. The number of Indian Board judges was again reduced on January 19, 1986 (not indicated by table I.5), as a result of the reassignment of one of the two remaining judges to the Contract Appeals Board, thereby increasing the number of Contract Board judges to five. The OHA Director subsequently told us that he had appointed a second judge to the Indian Appeals Board effective June 8, 1986.

^cA temporary reduction from nine to eight Land Appeals Board judges occurred during July 1985. The vacancy was subsequently filled in March 1986, according to OHA's administrative officer.

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