

United States, 204 Ct. Cl. 188, *cert. denied*, 421 U.S. 963 (1975); *Yee v. United States*, 206 Ct. Cl. 388, 512 F. 2d 1383 (1975). Further, the court has found that there must be satisfactory indication that a correction board's decision is based "upon a balanced consideration of all the evidence available and presented." *Smith v. United States*, 168 Ct. Cl. 545, 553 (1964).

"IT IS THEREFORE ORDERED that plaintiff's request for review and motion for reconsideration be and they are hereby denied.

"IT IS FURTHER ORDERED that pursuant to Pub. L. 92-415, 86 Stat. 652, 28 U.S.C. § 1491 (Supp. III 1973), the foregoing authorities, and Court of Claims Rule 149, the case is remanded to the Air Force Board for Correction of Military Records with instructions to reconsider the case consistent with the views expressed in this order; and to make findings of fact showing the basis for its conclusions on such reconsideration.

"In its reconsideration of plaintiff's application for relief, the Board shall consider the record heretofore made, and in its discretion, may grant a hearing and consider such other evidence and materials as may properly be presented by the parties.

"After completion of the Board's proceedings, the record thereof will be presented in normal course for action by the Secretary of the Air Force.

"Counsel for the plaintiff is designated under Rule 149 (f) to advise the trial judge and opposing counsel of the status of proceedings on remand at intervals of 90 days or less, beginning with the date of this order.

"These proceedings are stayed for a period not to exceed six months from the date of this order, pending the Board's reconsideration upon remand."

No. 102-03. JUNE 20, 1975

Jessie Short, et al.

Indian claims; Government liability for payment to Indians entitled to recover; individual Indian's burden of proving entitlement.—On June 20, 1975 the court issued the following order:

Before SKELTON, *Judge*, Presiding, KUNZIG and BENNETT,
Judges.

"This case comes before the court on defendant's request for review of the order of the trial judge dated May 2, 1975, which stated, among other things:

1. In pursuance of the adjudicated liability of the defendant United States, through the Department of Interior, to make payments, in lawful amount, of the income of the Hoopa Valley Reservation to those of the plaintiffs entitled to recover in this case, and the duty of the Government as defendant to confess judgment in favor of those of plaintiffs whom it deems entitled to recover, the Government as defendant is directed to devote all reasonable efforts towards identifying and recognizing those plaintiffs entitled to recover, including without limitation the provision of assistance to plaintiffs in the gathering and processing of the questionnaires now being circulated to plaintiffs to show their eligibility to recover.

In light of the adjudicated error of United States as trustee in making payments, since at least 1958, to a group smaller than those entitled, it is incumbent upon defendant to exert its best efforts to expedite the recognition or litigation of questions of eligibility which remain for disposition in this case.

* * * * *

4. The defendant and the Intervenor are directed within 3 months to file a statement of the standards—blood, residence and any others—they propose to espouse to govern the determination of eligibility. The plaintiffs are within two months thereafter to file a responsive memorandum.

"Defendant's request for review and plaintiffs' response thereto have been submitted to the court on briefs without oral argument. Upon consideration thereof, the court is of the opinion that notwithstanding the prior decision of this court [202 Ct. Cl. 870, 486 F. 2d 561 (1973), *cert denied*, 416 U.S. 961 (1974)], adjudicating liability of the United States to make payments, in lawful amount, of the income of the Hoopa Valley Reservation to those plaintiffs entitled to receive them, the case is still an adversary proceeding by a number of individuals against the Government, and these individuals have the burden of proving their entitlement to payments; the Government does not have this burden. The

Government has no obligation to these plaintiffs except to make available to them such pertinent records as are available to the Government. The plaintiffs must prove their own claims and the Government is not required to make such proof for them, and this court is without authority to require the Government to prosecute the claims of the plaintiffs for them.

"It is therefore concluded and ordered that defendant's request for review is granted and the order of the trial judge of May 2, 1975, is set aside and the case is remanded to the trial judge for further proceedings in accordance with this order."

KUNZIG, *Judge*, dissenting.

"I respectfully dissent. In *Jessie Short, et al. v. United States*, 202 Ct. Cl. 870, 486 F.2d 561 (1973), *cert. denied*, 416 U.S. 961 (1974), we held the Government liable to qualified members of the Hoopa Valley Reservation who were entitled to, but did not receive, income from the sale of reservation timber. We recognized the United States, as trustee for Indians, had a duty to insure a fair share distribution of reservation revenue to *all* qualified members of the Hoopa Valley Reservation. In my view, inherent in that decision was the requirement that the Government, in its fiduciary capacity, should henceforth take every necessary step to insure that all eligible members were credited with a fair share of subsequent revenues. By requiring defendant United States to aid plaintiffs' counsel in identifying eligible recipients, Trial Judge Schwartz did nothing more than require the Government to live up to its fiduciary duty. As such, I do not find the defendant's burden of proof argument persuasive and see no good reason for setting aside the order of the trial judge of May 2, 1975."

No. 119-68. JUNE 20, 1975

Cosmo Construction Co. and The First National Bank & Trust Company of Tulsa

Contracts; breach; claim of Government delay in investigating changed conditions.—This case was before the court