

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 81-7978

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JOHNNIE LEE BILLINGTON,

Plaintiff-Appellant,

versus

LEWIS C. UNDERWOOD, Individually  
and as Executive Director of the  
Housing Authority of the City of  
Tifton, Ga., et al.,

Defendants-Appellees.

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA

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(May 23, 1983)

Before FAY and CLARK, Circuit Judges, and MORGAN,  
Senior Circuit Judge.

PER CURIAM:

This case is before our court for the second time. Because we find that the Housing Authority of the City of Tifton, Georgia (THA) produced no evidence substantiating its declaration of Billington's ineligibility, we reverse and remand.

In April 1978, appellant Billington applied to THA for admission to federally subsidized low-rent public housing.<sup>1</sup> He was subsequently informed of his eligibility<sup>2</sup> and placement on the waiting list. Appellant alleges that he then made plans to relocate his residence. On June 1, 1978, however, THA informed appellant that he was no longer eligible for said housing. Billington, through his attorney, requested a hearing on his denial of eligibility, and on June 14, 1978 a meeting was held at the offices of THA's attorney. Upon being told that his denial of eligibility was final and receiving only general accusations of the reasons therefor, appellant filed suit in district court challenging, among other things, the housing authority's procedures for determining eligibility.

On June 12, 1979, the district court granted the housing authority's motion for judgment on the pleadings. This court reversed and remanded for a hearing pursuant to federal law and regulations. Billington v. Underwood, 613 F.2d 91 (5th Cir. 1980).<sup>3</sup> An informal hearing was held at which plaintiff presented testimony, affidavits, and

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<sup>1</sup>The Housing Authority of the City of Tifton, Georgia is a federally subsidized, state chartered, locally administered corporate body established pursuant to Off. Code Ga. Ann. sec. 8-3-1 et seq. (1982).

<sup>2</sup>Record Vol. 2, p. 79.

<sup>3</sup>The court specifically declined to address the constitutional issues, finding the hearing to be required under Federal Regulation 24 C.F.R. sec. 860.207(a) (1979) and 42 U.S.C. sec. 1401 et seq. (1970). Billington v. Underwood, 613 F.2d at 93.

documents rebutting the bases listed as reasons for his ineligibility. The housing authority presented only one witness and two pieces of documentary evidence.

The hearing officer denied appellant relief. Mr. Billington then filed an amended complaint in the district court seeking legal and equitable relief under the Civil Rights Act of 1871, 42 U.S.C. sec. 1983, and the due process clause of the fourteenth amendment. On November 10, 1981, the district court denied relief to appellant and granted summary judgment to defendants based on a finding of deference to the housing authority in determining eligibility requirements. This timely appeal followed.

The hearing mandated by this court in Billington v. Underwood, 613 F.2d 91 (5th Cir. 1980), although informal in that it need not conform to the strictures of a trial, was a prescription to conduct a meaningful proceeding. Id. at 95. Appellant concedes that the hearing in the instant case complied in form with the required proceeding<sup>4</sup> but maintains that the hearing was not meaningful in that the decision rendered was not supported by the evidence. He asserts that "substantial" evidence is

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<sup>4</sup>In remanding the case for informal hearing, we advised that the proceeding "need not conform to the rigors of formal evidentiary rules, need not afford cross examination, need not be transcribed, and need not issue in a formal written decision of the hearing officer's findings of fact and conclusions of law." Billington v. Underwood, 613 F.2d at 95. Mr. Billington was, in fact, represented at the hearing by an attorney and allowed to cross-examine witnesses. The hearing was transcribed and the hearing officer rendered a written decision.

the yardstick to be used by a reviewing court. Appellees maintain, and the district court found, that substantial evidence existed to support the hearing officer's finding. Appellees also argue that, assuming the evidence is not substantial, only some evidence is required to sustain an agency finding pursuant to an informal hearing. The issue in this case, thus, concerns the standard of review to be used by a court in reviewing an administrative agency decision.

Courts and commentators have written extensively on the subject of judicial review of informal action by agencies. See, e.g., Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976); Dunlop v. Bachowski, 421 U.S. 560, 95 S.Ct. 1851, 44 L.Ed.2d 377 (1975); K. Davis, Administrative Law Treatise sec. 29.01-6 (Supp. 1982). The controversy has traditionally centered around whether a reviewing court must defer to the agency whenever there is "some" evidence to support the latter's finding or only when "substantial" evidence exists on the record.<sup>5</sup> Frequently, however, the various standards of review are merged into a single standard. In South Georgia Natural Gas Company v. Federal Energy Regulatory Commission, 699 F.2d 1088 (11th Cir. 1983), this court reviewed an agency interpretation of its regulation to determine whether the interpretation was reasonable,

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<sup>5</sup>Informal hearings often do not have what is commonly thought of as a record. However, in this case, a record in the traditional sense is available.

arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. Id. at 1090. Likewise, in Home Health Services of the United States v. Schweiker, 683 F.2d 353 (11th Cir. 1982), we stated, "The scope of review of agency actions is limited to a determination of whether the Board's findings are arbitrary, capricious, an abuse of discretion, not in accordance with the law or unsupported by substantial evidence in the record as a whole." Id. at 356. See K. Davis, Administrative Law Treatise sec. 29.01-6 (Supp. 1982).

Upon reviewing the record in this case, we find no evidence to support the decision reached. As noted above, the housing authority presented only one witness, the Assistant Executive Director of THA. The witness testified that Mr. Billington had been found eligible for public housing and so informed. Record Vol. 2, pp. 78-79. The witness testified further that although Mr. Billington visited the office approximately once per week for over six weeks, he was never asked to submit further information regarding his application. Record Vol. 2, pp. 78-79. She also stated that she possessed no knowledge of a regulation requiring that she keep a file on applicants verifying their status with the housing authority. Record Vol. 2, pp. 81-82. Thus, the only documentary evidence presented by THA consisted of two statements dated after the decision of ineligibility, both of which were later repudiated by the authors.

The purpose of an informal hearing is accurate fact-finding. Billington v. Underwood, 613 F.2d at 95. While acknowledging the discretion necessarily granted administrative agencies and their directors, we equate the mandate calling for a "meaningful" hearing with one requiring a "fair" proceeding. We conclude that such adjectives are conspicuously absent from a hearing at which supporting evidence is altogether lacking.<sup>6</sup> The agency action in this case thus fails under each and every standard of review. The case is remanded for entry of judgment for the plaintiff.

REVERSED AND REMANDED.

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<sup>6</sup>We note also the results of an investigation by the Chief Administrative Law Judge of the Department of Housing and Urban Development into the Housing Authority of the City of Tifton, Georgia. The decision, issued August 17, 1981, stated that THA was in noncompliance with both its own and HUD's regulations and in violation of Title VII. The evidence set out in the report indicates an arbitrary and discriminatory selection of tenants. In the Matter of: the Housing Authority of the City of Tifton, Georgia, Department of Housing and Urban Development Administrative Decision, Docket No. 80-1981.