



INTERIOR BOARD OF INDIAN APPEALS

Split Family Support Group v. Northwest Regional Director,
Bureau of Indian Affairs

36 IBIA 5 (01/22/2001)



United States Department of the Interior

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

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| SPLIT FAMILY SUPPORT GROUP, | : | Order Docketing and Dismissing Appeal |
| Appellant | : | |
| | : | |
| v. | : | |
| | : | Docket No. IBIA 01-29-A |
| NORTHWEST REGIONAL DIRECTOR, | : | |
| BUREAU OF INDIAN AFFAIRS, | : | |
| Appellee | : | January 22, 2001 |

Appellant Split Family Support Group, through its Spokespersons, Darryl A. Dupuis and Regina J. Parot, seeks review of an October 16, 2000, letter from the Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning a petition for a Secretarial election to amend the Constitution of the Confederated Salish and Kootenai Tribes (Tribes). For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal.

On September 1, 2000, Appellant submitted a petition for a Secretarial election to the Superintendent, Flathead Agency, BIA. The Superintendent reviewed the petition and transmitted it to the Regional Director. After determining that the petition did not have the required number of signatures, the Regional Director declined to call a Secretarial election. Although not citing any authority, he stated that his decision was “final for the Bureau.” In a November 21, 2000, order, the Board noted that the Regional Director’s statement appeared to be based on 25 C.F.R. § 82.10(b). Section 82.10 provides in pertinent part:

(a) Within 30 days after the official filing date [of a petition], the local Bureau official shall forward to the [Regional] Director, or when the [Regional] Director is the local Bureau official, directly to the Commissioner, the original of the petition and its accompanying signatures, together with recommendations concerning challenges [to the petition] and conclusions concerning:

- (1) The validity of the signatures;
- (2) The adequacy of the number of signatures; and
- (3) The propriety of the petitioning procedure.

(b) The [Regional] Director or the Commissioner, as the case may be, shall within 45 days after the official filing date decide upon each challenge and the sufficiency of the petition and announce whether the petition shall be acted upon. If a decision is reached that the petitioning action is for any reason insufficient, the spokesman for the petitioners and the governing body of the tribe will be so informed and given the reasons for the decision. If a petitioning action warrants action by the Secretary or Commissioner, the spokesman for the petitioners and the governing body of the tribe concerned will be so informed. The decision in such matters shall be final.

In its November 2000 order, the Board informed the parties that it had previously held that it lacks jurisdiction to review a BIA decision when a program regulation makes that decision final for the Department. It referred the parties to its decisions in Stogsdill v. Southern Plains Regional Director, 35 IBIA 157 (2000) (interpreting 25 C.F.R. § 62.10(a) concerning adverse enrollment decisions) and Welch v. Minneapolis Area Director, 17 IBIA 56 (1989) (interpreting 25 C.F.R. § 88.1(c) in regard to decisions approving, disapproving, or conditionally approving attorney contracts). The Board gave the parties an opportunity to address whether or not it had jurisdiction to review this decision. Both Appellant and the Regional Director filed responses.

The Regional Director takes the position that 25 C.F.R. § 82.10(b) precludes Board review of his decision.

Appellant contends that 25 C.F.R. § 82.10(b) is distinguishable from the regulations addressed in the decisions which the Board referenced. It argues that 25 C.F.R. § 62.10(a) specifically provides that an Area Director's decision "shall be final for the Department." Although acknowledging that 25 C.F.R. § 88.1(c) does not state that decisions are "final for the Department," Appellant contends that such finality "is implicit since the power is conferred by statute on the Secretary and such power has been delegated to a subordinate official." Appellant's Jurisdictional Brief at 2.

The Board has previously interpreted 25 C.F.R. § 88.1(c), which provides that a Regional Director's decision "shall be final," to mean that the decision is final for the Department and not subject to Board review. 25 C.F.R. § 82.10(b) similarly provides that the decision "shall be final." The Board finds that Appellant has failed to raise a cogent argument as to why these two regulations should be interpreted differently.

Referring to the last sentence in 25 C.F.R. § 82.10(b) as quoted above, Appellant also argues that the regulation could be read to mean that actions by the Secretary or Commissioner, if warranted, are final. It thus contends that subsection 82.10(b) is ambiguous as to whose decisions are final.

When 25 C.F.R. § 82.10(b) is read in context with the remainder of section 82.10 and with Part 82 as a whole, there is no ambiguity as to whether a Regional Director's decision is final. "The decision in such matters," is the decision made under 25 C.F.R. § 82.10(b). That decision will normally be made by either a Regional Director or the Commissioner, depending upon whether the petition was filed with a "local Bureau official" subordinate to the Regional Director, or with the Regional Director as the "local Bureau official." In either case, the regulation makes that decision final. Should the Secretary for some reason become personally involved in a decision under subsection 82.10(b), his decision would be final even without the regulation because the Secretary is the final review authority within the Department.

Appellant cites several cases in which the Board discussed whether a BIA decision was appealable, whether the administrative record supported the BIA decision, or whether BIA had adequately explained the rationale for its decision. However, none of the cases which Appellant cites involved a regulation which stated that the BIA decision was final or held that the Board has authority to reach the merits of a case over which it does not have jurisdiction.

Appellant also argues that the Board has authority under 43 C.F.R. § 4.318 to exercise the authority of the Secretary to correct a manifest injustice or error. This regulation provides:

An appeal shall be limited to those issues which were * * * before the official of the Bureau of Indian Affairs on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board shall not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

The Board disagrees with Appellant's reading of this regulation. Section 4.318 is not an independent grant of jurisdiction for the Board to review BIA decisions at will. Rather, it defines the scope of the Board's authority to review the BIA decision in cases which are otherwise properly before it.

The Board concludes that Appellant has failed to show that the Board has jurisdiction to review the Regional Director's decision at issue here.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed but dismissed for lack of jurisdiction.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge