



INTERIOR BOARD OF INDIAN APPEALS

Oranna Bumgarner Felter v. Western Regional Director, Bureau of Indian Affairs

36 IBIA 98 (03/27/2001)



United States Department of the Interior

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

ORANNA BUMGARNER FELTER, : Order Docketing and Dismissing Appeal
Appellant :
 :
v. :
 : Docket No. IBIA 01-78-A
WESTERN REGIONAL DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : March 27, 2001

Appellant Oranna Bumgarner Felter filed an appeal with the Board of Indian Appeals (Board) under 25 C.F.R. § 2.8, which provides procedures for appealing from the inaction of an official of the Bureau of Indian Affairs (BIA). ^{1/} Appellant alleged that neither the Superintendent, Uintah and Ouray Agency, BIA, nor the Western Regional Director, BIA (Regional

^{1/} Section 2.8 provides in pertinent part:

“(a) A person or persons whose interests are adversely affected, or whose ability to protect such interests is impeded by the failure of an official to act on a request to the official, can make the official’s inaction the subject of appeal, as follows:

“(1) Request in writing that the official take the action originally asked of him/her;

“(2) Describe the interest adversely affected by the official’s inaction, including a description of the loss, impairment or impediment of such interest caused by the official’s inaction;

“(3) State that, unless the official involved either takes action on the merits of the written request within 10 days of receipt of such request by the official, or establishes a date by which action will be taken, an appeal shall be filed in accordance with this part.

“(b) The official receiving a request as specified in paragraph (a) of this section must either make a decision on the merits of the initial request within 10 days from receipt of the request for a decision or establish a reasonable later date by which the decision shall be made, not to exceed 60 days from the date of request. If an official establishes a date by which a requested decision shall be made, this date shall be the date by which failure to make a decision shall be appealable under this part. If the official, within the 10-day period specified in paragraph (a) of this section, neither makes a decision on the merits of the initial request nor establishes a later date by which a decision shall be made, the official’s inaction shall be appealable to the next official in the process established in this part.”

Director) had responded to her requests for action by BIA. Although the materials Appellant submitted with her notice of appeal did not clearly show that she had followed the procedures established in 25 C.F.R. § 2.8, the Board gave her the benefit of the doubt and, by order dated February 22, 2001, requested a report from the Regional Director on the status of his review of the issues Appellant raised.

The Board received the Regional Director's response on March 22, 2001. For the reason discussed below, the Board concludes that this appeal must be dismissed.

The materials which have been provided to the Board by both Appellant and the Regional Director show that Appellant did not comply with the regulatory requirements. As the Board stated in Norton v. Fort Hall Agency Superintendent, 19 IBIA 278, recon. denied, 20 IBIA 78 (1991):

Regulations in 25 CFR 2.8 provide specific procedures to be followed in order to appeal from the inaction of a BIA official. The procedure requires the person aggrieved to file a written request for decision with the BIA official whose inaction is the subject of controversy. That official is then required to take certain enumerated actions. Only after this procedure has been followed is there a right to proceed to a higher official. Because appellant has not followed this procedure, his appeal is premature.

This appeal is also premature because Appellant has not followed the regulatory procedures.

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 without prejudice as premature.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge