



INTERIOR BOARD OF INDIAN APPEALS

George Budak v. Rocky Mountain Regional Director, Bureau of Indian Affairs

39 IBIA 89 (07/08/2003)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

GEORGE BUDAK, : Order Docketing and Dismissing Appeal  
Appellant :  
 :  
v. :  
 : Docket No. IBIA 03-98-A  
ROCKY MOUNTAIN REGIONAL :  
DIRECTOR, BUREAU OF INDIAN :  
AFFAIRS, :  
Appellee : July 8, 2003

Appellant George Budak sought review of a March 18, 2003, decision issued by the Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The decision affirmed a trespass assessment against Appellant for illegal harvesting of a crop on Allotment No. 765 on the Fort Peck Reservation, apparently during the 1998 harvest season. Appellant indicated that the Superintendent, Fort Peck Agency, BIA, had issued a decision on December 28, 1998, and that he appealed the decision to the Regional Director the same day. The Regional Director did not issue a decision until March 18, 2003. For the reasons discussed below, the Board of Indian Appeals (Board) docketed this appeal but dismisses it for failure to prosecute.

In his notice of appeal, Appellant stated:

The basis for this appeal is the unreasonable delay in rendering this decision. A party to an administrative adjudication is entitled to the expeditious rendering of a final decision, so that the party may know where to appeal next. The Federal Administrative Procedures Act requires an agency to conclude any matter presented to it within a reasonable time, taking into account the convenience and necessity of the parties or their representatives. 5 USCA Section 555 (b). This delay can only be attributed to “red tape”, “inertia” or an unwillingness to come to grips with the issue. The facts at issue are not complicated and the case is not procedurally complex, so there can be no valid reasons for this extensive delay by the Regional Director.

[Appellant] has been prejudiced by the extensive delay in rendering a decision in this matter. The particular fields where the alleged trespass

and illegal harvesting took place have been seeded and torn up several times over the past four (4) plus years. Evidence has thus been destroyed that could prove the merits of [Appellant's] contentions in the original decision by the Superintendent, Fort Peck Agency.

Notice of Appeal at 1-2.

On May 9, 2003, the Board issued an order in this appeal. It stated:

The only issue Appellant has raised is the length of time it took the Regional Director to issue his decision. Although the Board agrees that a long period of time passed between the filing of Appellant's appeal and the Regional Director's decision, it does not agree that Appellant has listed the "only" reasons that might account for the delay. Appellant has shown that he is aware of the Administrative Procedure Act. If he were upset by the amount of time the Regional Director was taking in issuing a decision, he could have acted long ago to force a decision by filing suit in Federal court under 5 U.S.C. § 706(1), which authorizes the courts to "compel agency action unlawfully withheld or unreasonably delayed." Alternatively, and as a less expensive course of action, he could have sought relief under 25 C.F.R. § 2.8, which provides procedures for forcing action by a BIA official who has not responded to a request for action or decision. However, Appellant does not indicate that he took any action at all in regard to the delay while the matter was pending before the Regional Director.

The Board is not at present overly impressed with Appellant's generalized assertion that evidence concerning the alleged trespass and illegal harvesting has been destroyed during the time this matter was pending before the Regional Director. The Regional Director would not, under the best of circumstances, have rendered an immediate decision. For this reason, the operations of the approved lessee would almost certainly have caused the same result even if the matter had been decided in a much shorter time period.

While this matter was pending before the Regional Director, Appellant had the benefit of not having to pay the fine, while, if the allegations are correct, the lessee suffered the loss of income from an illegally harvested crop and received no compensation for that loss. Furthermore, although this cannot be determined from the materials presently before the Board, the landowners may also have suffered a loss.

May 9, 2003, Notice and Order at 2. The Board gave Appellant until June 13, 2003, in which to make a more concrete showing as to how he was prejudiced by the Regional Director's delay in issuing the March 18, 2003, decision. Specifically, the Board advised:

Appellant must, at the very least, show why he should not be held to have consented to the length of time the Regional Director took in issuing a decision by his own, apparent, failure to raise any objection to the delay while the matter was pending before the Regional Director. He must also show what evidence he believes he cannot present now that he could have presented earlier had this appeal been decided in a shorter time period. In making this showing, Appellant must explain when this evidence became unavailable to him and why he was unable to take steps to preserve this evidence in some way other than by keeping the ground totally undisturbed during the appeal period.

Id.

Appellant has not responded to the Board's order.

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 from the March 18, 2003, decision of the Rocky Mountain Regional Director is docketed but dismissed with prejudice for failure to prosecute.

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge

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//original signed

Kathleen R. Supernaw  
Acting Administrative Judge