



INTERIOR BOARD OF INDIAN APPEALS

Sandy Lake Band of Ojibwe Indians v. Midwest Regional Director,
Bureau of Indian Affairs

46 IBIA 310 (03/21/2008)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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SANDY LAKE BAND OF OJIBWE)	Order Dismissing Appeal
INDIANS,)	
Appellant,)	
)	
v.)	Docket No. IBIA 08-9-A
)	
MIDWEST REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	March 21, 2008

The Sandy Lake Band of Ojibwe Indians (Appellant) appealed to the Board of Indian Appeals (Board) from an August 28, 2007, letter from the Midwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director’s letter responded to a request from Appellant for BIA to call a Secretarial election to allow Appellant to “reorganize” under the Indian Reorganization Act (IRA), *see* 25 U.S.C. § 476.¹ Pending before the Board is a motion from the Regional Director to dismiss this appeal because on September 25, 2007, the Assistant Secretary - Indian Affairs (Assistant Secretary) responded to a separate but substantively identical request from Appellant. The Regional Director contends that the Assistant Secretary’s response constitutes a final decision for the Department of the Interior (Department), and therefore the Board is precluded from reviewing the Regional Director’s letter. We agree that the Assistant Secretary’s letter constitutes a final decision responding to Appellant’s request and that it is appropriate for the Board to dismiss this appeal.

Background

Appellant is not Federally-recognized as a tribal entity. *See* Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs, 72 Fed. Reg. 13,648 (Mar. 22, 2007). In a letter dated August 1, 2006, the Department’s Associate Solicitor for the Division of Indian Affairs declined a request from Appellant to be added to the list of Federally-recognized tribal entities. He noted, however,

¹ A Secretarial election is a Federal election conducted pursuant to the IRA and the Department of the Interior’s implementing regulations. *See* 25 C.F.R. Part 81.

that because Appellant had not petitioned the Department for Federal acknowledgment, his response could not be construed as a determination under the Federal acknowledgment regulations. *See* 25 C.F.R. Part 83.

On July 10, 2007, Monroe Skinaway, Appellant's chairman, wrote substantively identical but separate letters to the Assistant Secretary and to the Minnesota Agency Superintendent, requesting that Appellant be allowed its "right to reorganize" under the IRA, 25 U.S.C. § 476. In neither letter did Skinaway ask to have Appellant added to the list of Federally-recognized tribal entities; nor did he request Federal acknowledgment of Appellant as an Indian tribe. The Superintendent responded by sending Appellant a copy of the Associate Solicitor's August 1, 2006, letter, and Appellant appealed to the Regional Director. By letter dated August 28, 2007, the Regional Director responded to Appellant, stating that Appellant does not meet the definition of "tribe" under the regulations pertaining to Secretarial elections, *see* 25 C.F.R. § 81.1(w), and therefore is ineligible to request a Secretarial election to reorganize under the IRA. The Regional Director also stated that he was simply reiterating earlier opinions and correspondence from Department officials and that the Department's position "remains the same" — i.e., that presently Appellant is not Federally recognized as a tribe. Letter from Regional Director to Skinaway, Aug. 28, 2007, at 3. Appellant appealed the Regional Director's letter to the Board, and the Board received the appeal on September 27, 2008.

On September 25, 2007, the Assistant Secretary separately responded to Appellant's July 10, 2007, letter addressed to him, which also had requested that Appellant be allowed to reorganize under the IRA. The Assistant Secretary reminded Appellant of the August 1, 2006, letter from the Associate Solicitor,² and stated that until there was a final determination through 25 C.F.R. Part 83 or legislative recognition of Appellant, the Department's position remained the same. *See* Letter from Assistant Secretary to Skinaway, Sept. 25, 2007, at 2. The Assistant Secretary concluded his letter by stating: "You have written to the Bureau of Indian Affairs, the Department's Office of the Solicitor, and the Office of the Assistant Secretary - Indian Affairs with similar requests. There is no further action to take on your requests until you file a petition with the Office of Federal Acknowledgment." *Id.*

² Incidentally, the Associate Solicitor for the Division of Indian Affairs in August of 2006, Carl Artman, was later appointed to the position of Assistant Secretary. Thus, both the August 1, 2006, and the September 25, 2007, letters to Appellant were from the same individual, acting in different official capacities.

On November 9, 2007, the Board received a motion from the Regional Director to dismiss this appeal. The Regional Director argued that the Assistant Secretary's letter had addressed the same issues as those addressed by the Regional Director, that the Assistant Secretary's letter constituted a final Departmental position on the matter, and that therefore the Board lacks jurisdiction to adjudicate this appeal. The Board allowed Appellant to respond to the Regional Director's motion, and on January 7, 2008, the Board received Appellant's response.

Discussion

Appellant does not disagree with the proposition that if the Assistant Secretary's letter constitutes a decision on Appellant's request to reorganize under the IRA, that decision is final for the Department. *See* 25 C.F.R. § 2.6(c); *Hall v. Assistant Secretary - Indian Affairs*, 46 IBIA 77 (2007); *Felter v. Acting Western Regional Director*, 37 IBIA 247, 250 (2002). Nor does Appellant suggest, if that is the case, that it would be appropriate for the Board to review the Regional Director's letter addressing the same request. Instead, Appellant contends that the Assistant Secretary's response does not constitute a decision on Appellant's request for a Secretarial election. According to Appellant, the Assistant Secretary's letter "simply thanks" Appellant for sending the July 10, 2007, letter, and then goes on to deny Appellant's "other request for federal acknowledgment." Appellant's Opposition to Appellee's Motion to Dismiss at 2. Thus, with respect to Appellant's request for an IRA election, Appellant argues that the Assistant Secretary's letter was no more than an "acknowledgment . . . that he had received [Appellant's] request." *Id.*

We disagree with Appellant's interpretation of the intent and effect of the Assistant Secretary's letter. First, we think that, fairly construed, it is clear that the Assistant Secretary in substance denied Appellant's request to reorganize under the IRA on the ground that lack of Federal recognition of Appellant as an Indian tribe made its request premature. Second, we conclude that because the Assistant Secretary's decision is final for the Department and because it addressed and decided a request from Appellant that was identical to the request to which the Regional Director responded, this appeal from the Regional Director's letter must be dismissed.

The Assistant Secretary's letter clearly indicates that the Assistant Secretary is responding to Appellant's July 10, 2007, letter, which the Assistant Secretary characterizes as a request from Appellant to reorganize under the IRA. The Assistant Secretary did not, as Appellant contends, purport in his September 25, 2007, letter to "deny" a request from Appellant to be Federally recognized as an Indian tribe. Instead, he reiterated what he characterized as the Department's unchanged position — that Appellant was not Federally recognized and has not petitioned for Federal acknowledgment. The Assistant Secretary

concluded that “[t]here is no further action to take on your requests until you file a petition with the Office of Federal Acknowledgment.” Letter from Assistant Secretary to Skinaway, Sept. 25, 2007.

Read in context, we think it is clear that the reference to “requests” — plural — included, at a minimum, Appellant’s request to reorganize under the IRA. After all, Appellant’s request to reorganize was the only subject that Appellant raised in its July 10, 2007, letter to the Assistant Secretary. To accept Appellant’s interpretation of the Assistant Secretary’s letter would, in effect, construe the letter as utterly non-responsive to the very letter to which he was responding. The more natural construction of the Assistant Secretary’s letter is that it effectively denied, as premature, Appellant’s request to be allowed to reorganize under the IRA, because Appellant is not presently Federally recognized.

Because the Assistant Secretary addressed and decided a request from Appellant that was substantively identical to Appellant’s request to which the Regional Director responded, and because the Assistant Secretary’s decision is final for the Department, we agree that this appeal should be dismissed. Dismissal is appropriate regardless of whether our disposition is treated as a jurisdictional issue (as the Regional Director contends) or as a matter of res judicata. *See Castillo v. Pacific Regional Director*, 46 IBIA 209, 212-13 (2008).³

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses this appeal.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

³ The parties disagree whether the Regional Director’s letter of August 28, 2007, even constituted an appealable “decision.” Because we conclude that the finality of the Assistant Secretary’s response controls our disposition of this appeal, we need not decide that issue.