



INTERIOR BOARD OF INDIAN APPEALS

Steve Her Many Horses v. Acting Great Plains Regional Director, Bureau of Indian Affairs

47 IBIA 71 (05/20/2008)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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SUITE 300
ARLINGTON, VA 22203

STEVE HER MANY HORSES,)	Order Affirming Decision
Appellant,)	
)	
v.)	
)	Docket No. IBIA 08-06-A
ACTING GREAT PLAINS REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	May 20, 2008

On September 18, 2007, Steve Her Many Horses (Appellant), filed his notice of appeal, *pro se*, with the Board of Indian Appeals (Board) seeking review of an August 15, 2007, decision of the Acting Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director upheld the decision of the Pine Ridge Agency Superintendent, BIA, to deny Appellant a lease for Unit 13 on the Pine Ridge Reservation because Appellant did not provide a bond as required by 25 C.F.R. § 162.234 and the lease advertisement. Because Appellant has not made any arguments on appeal, we summarily affirm the Regional Director's decision.

Appellant's notice of appeal stated that he was appealing the Regional Director's August 15 decision but did not state any basis for his disagreement with the decision. Appellant stated that he intended to file a statement of reasons within 30 days. On October 11, 2007, this Board issued a Notice of Docketing and Order Setting Briefing Schedule (Order), which informed Appellant that he had the opportunity to file an opening brief on or before December 3, 2007. The Order also informed Appellant "that he bears the burden of proving error in the decision being appealed." Order at 2.

No statement of reasons nor an opening brief was received from Appellant. The Regional Director filed a brief to which Appellant did not respond. In short, the Board has not heard further from Appellant since the filing of his notice of appeal.

The Board has held consistently that appellants bear the burden of establishing that the Regional Director's decision was in error or was not supported by substantial evidence. *Van Gorden v. Acting Midwest Regional Director*, 41 IBIA 195, 198 (2005). An appellant

who has not made any allegation of error, has not met his burden of proof. *Johnson v. Rocky Mountain Regional Director*, 38 IBIA 64, 67 (2002). The Board may affirm the Regional Director's decision where the notice of appeal does not identify any error in the decision being appealed and the appellant submits no brief or other statement of reasons in opposition to the Regional Director's decision. *DeNobrega v. Acting Northwest Regional Director*, 40 IBIA 233, 234 (2005).

Appellant's bare bones notice of appeal does not allege any error in the Regional Director's decision. Appellant did not file a statement of reasons nor did he file an opening brief or other document containing allegations of error. Based on these facts, Appellant has not met his burden of proof showing the Regional Director's decision is in error. In addition, we have reviewed the administrative record and find that the record supports the Regional Director's decision. In particular, the record reflects that Appellant was provided several months — from December 15, 2006, until March 8, 2007 — to provide BIA with a bond covering the lease. Appellant apparently was unable to obtain a bond in that time.¹ Therefore, because Appellant was unable to produce a bond, BIA declined to finalize the lease with him and readvertised the lease.

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 Regional Director's August 15, 2007, decision is affirmed.²

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

¹ Appellant subsequently obtained a letter of credit but by that time, the lease had been readvertised — as BIA informed Appellant it would be — and BIA apparently was working with the new tenant to finalize the lease.

² In its brief, BIA urges us to dismiss this appeal on the grounds that it is now moot, since the lease would have expired by its own terms on December 31, 2007. Given our disposition of the appeal, we need not reach this argument.

On May 9, 2008, the Board received a motion from the Regional Director requesting authorization to advertise Unit 13 for lease for the period August 1, 2008, through July 31, 2009. This motion is now moot in light of our affirmance of the Regional Director's decision.