



INTERIOR BOARD OF INDIAN APPEALS

Robert W. Demery v. Standing Rock Agency Superintendent, Bureau of Indian Affairs

50 IBIA 136 (08/14/2009)



# United States Department of the Interior

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

ROBERT W. DEMERY,	)	Order Docketing and Dismissing Appeal,
Appellant,	)	and Referring Appeal to the Regional
	)	Director
v.	)	
	)	
STANDING ROCK AGENCY	)	Docket No. IBIA 09-130
SUPERINTENDENT, BUREAU OF	)	
INDIAN AFFAIRS,	)	
Appellee.	)	August 14, 2009

On July 27, 2009, the Board of Indian Appeals (Board) received a notice of appeal from Robert W. Demery (Appellant), seeking review of an undated decision of the Superintendent, Standing Rock Agency, Bureau of Indian Affairs (Superintendent; BIA). The Superintendent denied Appellant's request to place 115.56 acres of fee land<sup>1</sup> into trust status pursuant to 25 C.F.R. § 151.10(b) because he found that Appellant did not require assistance from BIA to handle his affairs. The Superintendent advised Appellant — erroneously — that he could appeal the decision directly to the Board.<sup>2</sup> We docket this appeal but dismiss it as premature because the Superintendent's decision is not appealable to the Board: Appellant must first exhaust his appeal rights before the Regional Director of BIA's Great Plains Regional Office.

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<sup>1</sup> The land is described on Appellant's Application for Trust Acquisition of Fee Land as a 5/9 undivided interest in the NE<sup>1</sup>/<sub>4</sub>, Section 26, T. 131 N., R. 80 W., and a 1/6 undivided interest in the SE<sup>1</sup>/<sub>4</sub>, Section 35, T. 129 N., R. 80 W. Neither the application nor the Superintendent's decision identify the state or county in which the land is located, but apparently the land is located on or near the Standing Rock Reservation.

<sup>2</sup> According to [www.usps.gov](http://www.usps.gov) and the tracking number given on the Superintendent's undated decision for the certified mailing of the decision to Appellant, Appellant received the decision on June 24, 2009. Appellant's notice of appeal bears a postmark date of July 23, 2009. Therefore, his appeal is timely submitted in accordance with the erroneous appeal instructions provided in the Superintendent's decision.

Under the general provisions for appealing an administrative action by a BIA official, a decision made by a BIA official subordinate to a Regional Director must first be appealed to the appropriate Regional Director before it can be appealed to the Board. *Northern Cheyenne Livestock Ass'n v. Acting Superintendent, Northern Cheyenne Agency*, 43 IBIA 24 (2006); *see* 25 C.F.R. § 2.4(a) & (e); 43 C.F.R. § 4.331(a). Therefore, the appeal instructions provided by the Superintendent are incorrect, Appellant's appeal to the Board from the Superintendent's decision is premature, and the Board lacks jurisdiction to consider it. After the Regional Director issues a decision, and if that decision adversely affects Appellant, he may then appeal the Regional Director's decision to the Board. *See* 25 C.F.R. § 2.4(e); 43 C.F.R. § 4.331; *Hardy v. Acting Midwest Regional Director*, 42 IBIA 255, 256 (2006).

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 docketed this appeal, but dismisses it as premature. The Board refers the appeal to the Great Plains Regional Director for consideration as an appeal from the Superintendent's undated decision declining to take land into trust for Appellant.

I concur:

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// original signed  
Debora G. Luther  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge