



INTERIOR BOARD OF INDIAN APPEALS

Fred Koontz v. Northwest Regional Director, Bureau of Indian Affairs

51 IBIA 269 (05/20/2010)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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|---------------------|---|-------------------------|
| FRED KOONTZ, |) | Order Dismissing Appeal |
| Appellant, |) | |
| |) | |
| v. |) | |
| |) | Docket No. IBIA 10-065 |
| NORTHWEST REGIONAL |) | |
| DIRECTOR, BUREAU OF |) | |
| INDIAN AFFAIRS, |) | |
| Appellee. |) | May 20, 2010 |

Fred Koontz (Appellant) appealed to the Board of Indian Appeals (Board) from the failure of the Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), to respond to an appeal allegedly submitted on or about July 3, 2009, from the January 28, 2008, assessment of timber trespass damages against Appellant by the Acting Superintendent of BIA’s Taholah Agency.¹ Appellant submitted a demand for action to the Regional Director pursuant to 25 C.F.R. § 2.8, to which the Regional Director apparently did not respond. Thereafter, Appellant appealed the Regional Director’s inaction to the Board, as permitted by 25 C.F.R. § 2.8(b), and asked the Board to take action in this matter. The Board is now informed that on May 6, 2010, the Regional Director responded to Appellant’s July 3 request for action, for which reason we now dismiss this appeal as moot.

Section 2.8 of Title 25 of the Code of Federal Regulations is an action-prompting regulation pursuant to which a BIA official may be compelled to issue a decision on the merits of a previously submitted request for action. Under section 2.8(b), a BIA official who receives a request for action on a pending matter “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.”²

¹ According to Appellant’s demand for action to the Regional Director, Appellant sought the return of funds paid for the alleged trespass.

² The request for action must (1) request in writing that the BIA official take the action requested in the initial request, (2) describe how the requestor is adversely affected by the

(continued...)

When an appeal from inaction is filed with the Board, the Board's jurisdiction is limited to the alleged failure to take action in response to a request. *See Forest County Potawatomi Community v. Deputy Assistant Secretary - Indian Affairs*, 48 IBIA 259, 265-66 (2009). It does not encompass a review of the underlying merits of the matter, *Midthun v. Rocky Mountain Regional Director*, 43 IBIA 258, 264 n.7 (2006), nor does it divest BIA of jurisdiction to issue a decision on the merits of an appellant's request, *Forest County Potawatomi Community*, 48 IBIA at 267-269. Therefore, BIA retains jurisdiction to issue a decision on the underlying merits of a matter that is the subject of an appellant's section 2.8 demand for action. Once BIA renders a decision on the merits, the inaction appeal becomes moot. *See id.* at 265 and cases cited therein. Thereafter, if the appellant is dissatisfied with the resulting decision, his remedy is to file a separate appeal on the merits decision. *Peak North Dakota LLC v. Great Plains Regional Director*, 47 IBIA 166, 167 n.3 (2008).

Upon receipt of Appellant's section 2.8 appeal, the Board requested a status report from the Regional Director. On March 25, 2010, the Board received a response from the Regional Director in which he advised that a decision would be rendered no later than April 30, 2010. Subsequently, on May 10, 2010, the Regional Director informed the Board and the parties that on May 6, 2010, he issued his decision on the merits of Appellant's initial request. Because Appellant has now received the relief available to him in this appeal — a decision on the merits of his July 3, 2009, request — we now conclude that Appellant's appeal is moot.

Therefore, pursuant to the authority delegated to the Board by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed this appeal but dismisses it as moot.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

²(...continued)
inaction on the initial request, and (3) advise that an appeal will be taken in accordance with 25 C.F.R. Part 2 if the official fails to render a decision on the merits of the initial request within 10 days of receipt of the request for a decision or, alternatively, fails to establish a reasonable later date by which a decision on the merits will be issued. 25 C.F.R. 2.8(a).