



INTERIOR BOARD OF INDIAN APPEALS

Tracey Mease v. Secretary of the Interior

52 IBIA 237 (11/09/2010)



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

TRACEY MEASE,)	Order Docketing and
Appellant,)	Dismissing Appeal
)	
v.)	
)	Docket No. IBIA 11-030
SECRETARY OF THE)	
INTERIOR,)	
Appellee.)	November 9, 2010

On October 25, 2010, the Board of Indian Appeals (Board) received a notice of appeal from Tracey Mease (Appellant), pro se. Appellant seeks review by the Board of the alleged failure of the Secretary of the Interior (Secretary), to respond to Appellant's September 24, 2010, request for action on an "appeal" that Appellant filed with the Secretary from an April 9, 2010, decision of the Acting Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA).¹ In his decision, the Regional Director affirmed a decision by the Robinson Rancheria Citizens Business Council (Business Council) to disenroll Appellant from the Robinson Rancheria of Pomo Indians (Tribe). The Regional Director's decision was made under 25 C.F.R. Part 62 (enrollment appeals), and upon affirming the Business Council's action, the Regional Director stated that his decision was final for the Department.² Appellant then sought to appeal the Regional Director's decision to the Secretary and now seeks to appeal to the Board from the Secretary's failure to respond.

¹ Appellant's appeal to the Secretary was dated May 5, 2010. Appellant then submitted her September 24, 2010, request to the Secretary to act on that appeal, and filed this appeal from his alleged inaction, pursuant to 25 C.F.R. § 2.8 (appeal from inaction from official).

² Part 62 provides procedures for appealing a tribal committee's disenrollment action to BIA when the tribal governing document provides for such an appeal. See 25 C.F.R. § 62.4(a)(3). Section 62.10(a) provides, with an exception not relevant here, that when an appeal is taken from an adverse enrollment action by a tribal committee, the Regional Director makes a decision "which shall be final for the Department and which shall so state in the decision."

We docket and dismiss this appeal because the Board lacks jurisdiction to review either inaction or action by the Secretary.

The Board's jurisdiction to review and decide appeals from administrative action, or alleged inaction, is prescribed by regulation, and does not include the authority to review appeals from inaction or action by the Secretary. *See* 43 C.F.R. § 4.330(a); 25 C.F.R. § 2.4(e); *West Bank Homeowners Ass'n v. Acting Phoenix Area Director*, 31 IBIA 222, 223 (1997). Thus, to the extent that this appeal seeks review of alleged inaction by the Secretary, the Board lacks jurisdiction to do so.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 docket and dismisses this appeal for lack of jurisdiction.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

³ We note that although Appellant based her appeal to the Board on the alleged inaction of the Secretary, as relief she asks the Board to reverse the Regional Director's decision. *See* Notice of Appeal at 8. An appeal from inaction does not encompass the underlying merits of a request for action. *See Sandy Point Improvement Co. v. Northwest Regional Director*, 51 IBIA 277, 278 (2010). But even if that were not the case, the Board would lack jurisdiction because the Board is not part of the appeal process under Part 62 and is specifically precluded from considering tribal enrollment disputes under the Board's general appeal regulations. *See* 25 C.F.R. § 62.10; 43 C.F.R. § 4.330(b)(1); *Quitiquit v. Acting Pacific Regional Director*, 51 IBIA 275, 275-76 (2010) (dismissing an appeal from Regional Director's decision upholding Business Council's decision to disenroll the appellant from the Tribe).