



INTERIOR BOARD OF INDIAN APPEALS

Amber J. Bighorse, Cheyenne and Arapaho Tribal Council and Governor Leslie Wandrie-Harjo v. Southern Plains Regional Director, Bureau of Indian Affairs

54 IBIA 117 (10/19/2011)

Reconsideration Denied:

54 IBIA 167

Related Board Case:

53 IBIA 121



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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AMBER J. BIGHORSE, CHEYENNE)	Order Docketing and Dismissing Appeals
AND ARAPAHO TRIBAL)	
COUNCIL, AND GOVERNOR)	
LESLIE WANDRIE-HARJO,)	
Appellants,)	
)	Docket No. IBIA 12-012
v.)	12-015
)	
SOUTHERN PLAINS REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	October 19, 2011

On September 26, 2011, the Board of Indian Appeals (Board) received a notice of appeal from Amber J. Bighorse, Esq., on her own behalf as a member of the Cheyenne and Arapaho Tribal Council (Tribal Council), and on behalf of the Tribal Council, seeking review of an August 23, 2011, “decision” (Decision) of the Southern Plains Regional Director (Regional Director), Bureau of Indian Affairs. On September 28, 2011, the Board received a notice of appeal seeking review of the same decision from Leslie Wandrie-Harjo, as Governor of the Cheyenne and Arapaho Tribes of Oklahoma (Tribe).¹ The Decision purported to “withdraw” the Regional Director’s January 6, 2011, decision (January 6 Decision), which the Board had already vacated on March 28, 2011. *See Acting Governor Leslie Wandrie-Harjo v. Southern Plains Regional Director*, 53 IBIA 121 (2011).

¹ The appeal by Bighorse and the Tribal Council has been assigned Docket No. IBIA 12-012. The appeal by Wandrie-Harjo has been assigned Docket No. IBIA 12-015. This case involves a tribal government dispute. The Board’s caption of the case and identification of the appellants (collectively, “Appellants”) shall not be construed as expressing any views on the merits of the underlying dispute, on Wandrie-Harjo’s status or authority, or on counsel’s authorization to file an appeal on behalf of the Tribal Council.

We summarily dismiss these appeals because, as Wandrie-Harjo correctly observes, “there was nothing to withdraw,” Wandrie-Harjo Notice of Appeal at 3, and the Regional Director’s purported withdrawal of something that was already null and void, because it had been vacated, could have no adverse effect on Appellants. And absent any adverse effect on them, Appellants lack standing to bring their appeals. *See* 43 C.F.R. § 4.331 (“interested party” affected by final administrative action or decision of a BIA official may appeal); 25 C.F.R. § 2.2 (“appeal” means a request for review of action or inaction “that is claimed to adversely affect the interested party making the request”; “interested party” means “any person whose interests could be adversely affected by a decision in an appeal”).²

In their notices of appeal, both Bighorse and the Tribal Council, on the one hand, and Wandrie-Harjo, on the other — who apparently are from opposing factions within the Tribe — contend that the Decision was improper in one respect or another. But whether or not issuance of the Decision was an ill-considered action is a distinct issue from whether it could adversely affect Appellants, giving rise to a right of appeal.³ We conclude that it could not. By purporting to “withdraw” an already-vacated decision, the Regional Director took an action that was legally irrelevant and of no effect.

² As the Board noted in *Wandrie-Harjo*, 53 IBIA at 123 n.4, the January 6 Decision was automatically stayed by operation of 25 C.F.R. § 2.6, no party had asked the Board to place that decision into effect, and thus it had never taken effect when the Board issued the order vacating it.

³ Notwithstanding her correct observation that there was nothing for the Regional Director to withdraw, and perhaps as an argument in the alternative, Wandrie-Harjo simultaneously asks that the Board make the Decision effective immediately, suggesting that the Decision “withdrew” BIA’s recognition of Janice Prairie Chief-Boswell as Governor of the Tribes. By its express terms, the Decision was limited to withdrawing the January 6 Decision, which the Board had already vacated. Wandrie-Harjo also interprets the Decision as deciding that BIA would withdraw from this matter. *See* Wandrie-Harjo Notice of Appeal at 2. Wandrie-Harjo reads more into the Decision than is there, and we decline to follow suit. For that reason, and because we conclude that the Decision has no legal effect, we dismiss these appeals, rather than purport to vacate the Decision, although the end result is the same.

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 but dismisses these appeals for lack of standing.⁴

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁴ Several other appeals involving this tribal dispute have been filed with the Board. *See Third Legislature of the Cheyenne and Arapaho Tribes v. Acting Southern Plains Regional Director*, Docket No. IBIA 11-151 (appeal from July 21, 2011, decision); *Cheyenne and Arapaho Tribal Council and Amber J. Bighorse v. Acting Southern Plains Regional Director*, Docket No. IBIA (unassigned) (appeal from Sept. 1, 2011, decision); *Governor Janice Prairie Chief-Boswell v. Acting Southern Plains Regional Director*, Docket No. IBIA (unassigned) (appeal from Sept. 1, 2011, decision). Our dismissal of the present appeals does not affect the other appeals, which remain pending.