



## INTERIOR BOARD OF INDIAN APPEALS

Cynthia Frye v. Acting Southern Plains Regional Director, Bureau of Indian Affairs

54 IBIA 246 (02/08/2012)

Denying reconsideration of:  
54 IBIA 183



# 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

CYNTHIA FRYE, )  
Appellant, )  
 )  
v. )  
 )  
ACTING SOUTHERN PLAINS )  
REGIONAL DIRECTOR, )  
BUREAU OF INDIAN AFFAIRS, )  
Appellee. )

Order Denying Reconsideration  
  
Docket No. IBIA 10-052-1  
  
February 8, 2012

On December 20, 2011, the Board of Indian Appeals (Board) reversed a December 18, 2009, decision by the Acting Southern Plains Regional Director (Regional Director) in an appeal filed by Cynthia Frye (Appellant). 54 IBIA 183. The Regional Director had canceled Appellant's lease for failure to pay rent. We reversed the Regional Director and vacated demand notices for rent because Appellant's lease did not require her to pay rent during the time period for which rent was sought.

On January 9, 2012, the Board received a "Notice" from counsel for the Regional Director in which the Regional Director requests that the Board's decision "be amended to reflect that the Appellee was not furnished a copy of [Appellant's] brief." Notice at 1. Notwithstanding this request, the Regional Director "does not at this point request reversal of the [Board's decision],"<sup>1</sup> and muses that she "may have proceeded differently if [she] had been furnished a copy of the alleged brief." *Id.*

We construe the Regional Director's "Notice" as a petition for reconsideration, and it is denied. Reconsideration of a Board decision will be granted only in extraordinary circumstances. 43 C.F.R. § 4.315(a); *Keane v. Northwest Regional Director*, 51 IBIA 235 (2010); *Jacobs v. Great Plains Regional Director*, 43 IBIA 272 (2006). The Regional

---

<sup>1</sup> The parties have 30 days from the date of a decision of the Board in which to seek reconsideration. 43 C.F.R. § 4.315(a). The Board delayed its decision on the Regional Director's petition for reconsideration to provide her with the full 30 days to determine whether she has any material or substantive objections to the Board's decision that she wishes the Board to consider. To date, the Board has not received any further communication from the Regional Director.

Director has not shown the requisite extraordinary circumstances warranting reconsideration, and therefore we deny her request.

The Regional Director does not seek correction of *any* error of law or fact in the Board's decision, much less an error that gives rise to extraordinary circumstances. The Board's decision did not state that the Regional Director had received Appellant's opening brief,<sup>2</sup> only that the Regional Director did not file a response. Therefore, there is nothing to amend in the Board's decision, and the Board declines the Regional Director's invitation to add new language to its decision.

Even if the Regional Director could show that her non-receipt of Appellant's brief gave rise to extraordinary circumstances, the Regional Director failed to provide an affidavit to support her assertion that she did not receive Appellant's brief. In contrast, Appellant attached a certificate of service to her opening brief that states that, *inter alia*, she served her brief on the Regional Director, the Southern Plains Regional Realty Officer, and Southern Plains Regional Trust Officer Robin Phillips.<sup>3</sup>

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 denies reconsideration of 54 IBIA 183.

I concur:

\_\_\_\_\_  
// original signed  
Debora G. Luther  
Administrative Judge

\_\_\_\_\_  
// original signed  
Steven K. Linscheid  
Chief Administrative Judge

---

<sup>2</sup> The document construed as Appellant's brief was a two-page letter with substantive argument and attachments that the Board received *after* it received Appellant's one-page notice of appeal. Therefore, the Board characterized this document as Appellant's "brief."

<sup>3</sup> To the extent that the Regional Director does not contend that *she* failed to receive her copy of Appellant's brief but rather that *her counsel* did not, Appellant was not required to serve counsel because counsel had not yet entered his appearance at the time Appellant filed her brief. The burden falls on the Regional Director to provide her counsel with a copy of all documents received in the appeal prior to counsel's appearance and on counsel himself to determine whether he has received a copy of all documents filed with the Board or issued by the Board.