



INTERIOR BOARD OF INDIAN APPEALS

Leigh Sage and Dominic Sage v. Southwest Regional Director, Bureau of Indian Affairs

54 IBIA 342 (04/25/2012)



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

LEIGH SAGE AND DOMINIC SAGE,)	Order Granting Motion for Remand
Appellants,)	and Dismissing Appeal
)	
v.)	
)	Docket No. IBIA 12-057
SOUTHWEST REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	April 25, 2012

Leigh Sage and Dominic Sage (Appellants), as guardians of India Sage, appealed to the Board of Indian Appeals (Board) from a November 29, 2011, decision (Decision) of the Southwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA), which, among other things, addressed a request for disbursement from India's restricted Individual Indian Money (IIM) account to reimburse Dominic for the purchase price of a vehicle acquired for India's transportation. The Regional Director concluded that the reimbursement request should be considered through internal procedures for vehicle purchases, and referred the matter back to the BIA Southern Ute Agency Superintendent (Superintendent) for further review and action. Appellants appealed the Decision because, as characterized by Appellants, the Regional Director "failed to act on" or "fail[ed] to approve" their request for the disbursement. *See* Notice of Appeal, Dec. 28, 2011, at 5 & n.1.

The Regional Director moved to have the matter remanded to him so that BIA could issue a decision on the merits of Appellants' reimbursement request, and subsequently clarified that if this matter is remanded, the Superintendent will "complete the review of material concerning the reimbursement of vehicle expenses and will make a decision." Regional Director's Response to Sages' Report on Consultation and Response to Motion for Remand, Mar. 30, 2012, (Regional Director's Response) at 1.¹ After consulting, the parties agreed to: (1) limit the time frame for a decision upon remand to no later than 45 days after the remand, and (2) deem a failure to make a decision within that time frame

¹ Although the Decision stated that the reimbursement request would be considered through the Department's internal procedures regarding vehicle purchases, it failed to make clear which official would make a decision about the request. *See* Decision at 3.

as a denial of Appellants' request. *See* Sages' Report on Consultation and Response to Motion for Remand, Mar. 12, 2012, (Appellants' Response) at 4; Regional Director's Response at 3.

Appellants still object to the Regional Director's motion to the extent that it provides that the matter will be decided initially by the Superintendent within the 45-day period, rather than by the Regional Director. Appellants' Response at 3, 4. Appellants argue that the Regional Director should issue the decision so that they will not have to "start the administrative appeal process all over again in the event of an adverse decision upon remand." Appellants' Response at 4.

A party opposing a motion by BIA for a voluntary remand has the burden to provide compelling reasons why the Board should not grant the request. *City of Minnewaukan v. Great Plains Regional Director*, 54 IBIA 34, 34 (2011). Appellants have not met that burden here. "The Board does not exercise general supervisory authority over BIA." *Cloverdale Rancheria of Pomo Indians of California v. Pacific Regional Director*, 48 IBIA 308, 311 (2009). Thus, the Board cannot not require the Regional Director, rather than the Superintendent, to decide the reimbursement request on the merits in the first instance.² Nor does the Board have authority, as requested by Appellants, to "deem" the decision by the Superintendent to be the decision of the Regional Director, thus making it appealable to the Board.

Ordinarily, when the Board grants a BIA motion for a remand, the Board will summarily vacate the underlying decision (or the portion subject to an appeal) and remand the matter to BIA for further consideration and issuance of a new decision. *See, e.g., Birdbear v. Acting Great Plains Regional Director*, 51 IBIA 273 (2010). In this case, the portion of the Decision that Appellants appealed was the Regional Director's determination to refer the matter back to the Superintendent for a decision on the merits, which is the same practical result as granting the motion for a remand. Accordingly, the Board declines

² Appellants' notice of appeal asked, as relief, that the Board order BIA to authorize the disbursement or that the Board directly approve their reimbursement request and order the Office of the Special Trustee to disburse the funds. A decision on the disbursement request is a matter that falls within BIA's discretionary authority. In such matters, the Board does not substitute its judgment for that of BIA, and if an appellant demonstrates an error in BIA's exercise of discretion, the remedy is a remand to BIA for further consideration — not an order from the Board directing BIA how to exercise its discretion. *See Alturas Indian Rancheria v. Acting Pacific Regional Director*, 54 IBIA 1, 13-14 (2011). Thus, even if we were to deny the Regional Director's motion, we could not grant the relief requested by Appellants.

to vacate the Decision, and instead remands this matter to BIA so that a decision on the merits of Appellants' reimbursement request can be issued.

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 remands the matter to the Regional Director for further action consistent with his motion, the parties' partial agreement, and this decision, and dismisses the appeal.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge