INTERIOR BOARD OF INDIAN APPEALS

Nelson R. Roanhorse v. Navajo Regional Director, Bureau of Indian Affairs

53 IBIA 126 (03/30/2011)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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NELSON R. ROANHORSE, Appellant,	)	Order Docketing and Dismissing Appeal
v.	)	Docket No. IBIA 11-057
NAVAJO REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	March 30, 2011

Nelson R. Roanhorse (Appellant) appealed to the Board of Indian Appeals (Board) from the failure of the Navajo Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to respond to Appellant's October 24, 2010, request for action or decision, which Appellant made pursuant to 25 C.F.R. § 2.8 (appeal from inaction of official). Appellant sought the Regional Director's intervention and action after (1) the BIA Fort Defiance Agency Natural Resource Manager (Natural Resource Manager) placed an administrative hold on Appellant's seasonal grazing permit (No. 18-35-84) and refused to combine that permit with another grazing permit held by Appellant, and (2) the Regional Supervisory Natural Resource Specialist (Natural Resource Specialist) failed to decide Appellant's appeal from the Natural Resource Manager's action. *See* Notice of Appeal; Letter from Appellant to Regional Director, Oct. 24, 2010, Notice of Appeal, Tab R.[1] When the Regional Director failed to respond to Appellant's request for intervention, Appellant filed this § 2.8 appeal with the Board from the Regional Director's inaction.

We docket but dismiss this appeal because a § 2.8 appeal is limited to prompting action by BIA, and, while the appeal was pending, the Natural Resource Specialist issued a decision on the merits of the permit dispute. Thus, Appellant has now received the decision that he sought to compel, first through his request for intervention by the Regional Director, and then through this § 2.8 appeal to the Board. Although the decision did not

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[1] Seasonal permit 18-35-84 apparently is for a grazing area in District 18 on the Navajo Reservation. Appellant also has a yearlong permit (No. 17-18-91) for a grazing area in District 17. *See id.* The administrative hold and refusal to combine the two permits were based on a determination that a person may not hold a grazing permit in more than one grazing district on the Navajo Reservation.

give Appellant the outcome that he sought — the Natural Resource Specialist denied Appellant's request to combine the two permits — it did advise Appellant of his right to appeal the decision to the Regional Director, and Appellant has indicated that he is proceeding with an appeal. Therefore, we dismiss this appeal, without prejudice to Appellant's right to again demand action or decision by the Regional Director if the Regional Director fails to issue a timely decision on Appellant's appeal from the Natural Resource Specialist's decision.

Background

Upon receipt of Appellant's § 2.8 appeal, the Board ordered a status report from the Regional Director.[2] On February 23, 2011, the Board received a status report from the Regional Director, in which he stated that a decision would be rendered no later than March 7, 2011. On March 7, 2011, the Natural Resource Specialist issued his decision denying Appellant's request to combine the two permits, and advising Appellant of his right to appeal that decision to the Regional Director. On March 18, 2011, the Board received a letter from Appellant responding to the March 7 decision. While expressing frustration over what he characterizes as unfair delay tactics by BIA, Appellant states that he is proceeding with his appeal.

Discussion

Although the precise status of this matter was not clear from the notice of appeal or the Regional Director's status report, which did not identify the official within the Regional Office who would issue a decision by March 7, it is now apparent that the Natural Resource Specialist assumed responsibility for making an initial decision in the Regional Office, with a right of appeal to the Regional Director, and that exhaustion of remedies before the Regional Director is still required.[3] Moreover, the Board has held that it is premature for the Board to consider a § 2.8 appeal from alleged inaction by a regional director if a

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[2] In that order, the Board noted that to the extent that Appellant might be seeking the Board's review on the merits of the Agency Natural Resource Manager's action, the Board lacks jurisdiction over an appeal from an Agency-level decision. *See* Order for Status Report, Jan. 26, 2011, at 2 n.2.

[3] A regional director has authority to decide an appeal from a decision issued "by a person under the authority of" the regional director. *See* 25 C.F.R. § 2.4(a).

decision by the Regional Director is not overdue.[4] *See Roubideaux v. Rocky Mountain Regional Director*, 53 IBIA 83, 84 (2011). Dismissal is also consistent with the Board's practice of dismissing § 2.8 appeals when the evidence indicates that BIA is acting or has acted on an appellant's request. *See Chee v. Navajo Regional Director,* 53 IBIA 29, 30 (2011); *Drechsel Brothers Inc. v. Assistant Secretary-Indian Affairs, Northwest Regional Director, and Acting Coeur D'Alene Agency Superintendent*, 48 IBIA 276, 277 (2009).

Appellant expresses significant frustration that BIA did not issue a written decision on the merits of his request sooner. Regardless of whether that frustration is justified, the Board lacks general supervisory authority over BIA. Now that the Natural Resource Specialist has issued a decision on the merits, a § 2.8 appeal to the Board from the failure by the Regional Director to compel the Natural Resource Specialist to issue a decision is moot. As we understand the posture of the matter, Appellant now has the right, through his appeal to the Regional Director, to raise all arguments he may wish to make relating to the administrative hold on his seasonal permit and his request to combine the two permits, and both issues may be resolved in a single decision. The Board strongly encourages the Regional Director to promptly issue a decision after time for filing pleadings has expired. *See* 25 C.F.R. § 2.19(a). If however, the Regional Director does not issue his decision within the time frame set forth in the regulations, our dismissal of this appeal does not preclude Appellant from submitting a new § 2.8 demand for action to the Regional Director, and thereafter filing a new appeal from inaction with the Board, if the Regional Director does not respond in accordance with § 2.8.

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 dockets but dismisses this appeal.

I concur:

// original signed	// original signed
Steven K. Linscheid	Debora G. Luther
Chief Administrative Judge	Administrative Judge

[4] Thus, to the extent that Appellant would have the Board, through this appeal, compel a decision on the merits by the Regional Director, such a request would be premature.