



INTERIOR BOARD OF INDIAN APPEALS

Will Graven v. Assistant Secretary - Indian Affairs

53 IBIA 87 (03/07/2011)

Related Board cases:

53 IBIA 27

54 IBIA 171

59 IBIA 202



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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WILL GRAVEN,)	Order Docketing and Dismissing
Appellant,)	Appeals
)	
)	
v.)	Docket Nos. IBIA 11-074
)	11-075
ASSISTANT SECRETARY - INDIAN)	
AFFAIRS,)	
Appellee.)	March 7, 2011

On February 16, 2011, the Board of Indian Appeals (Board) received two appeals from Will Graven (Appellant), seeking the Board's review of the alleged failure of the Assistant Secretary - Indian Affairs (Assistant Secretary), to respond to Appellant's two requests to the Assistant Secretary, both dated January 28, 2011, to take action or issue decisions on matters related to a leasing controversy involving the Memorial Airfield located on the Gila River Indian Community reservation. We docket these appeals, but dismiss them for lack of jurisdiction because the Board lacks jurisdiction to review alleged inaction by the Assistant Secretary.

The dispute underlying both appeals is Appellant's contention that the Gila River Indian Community improperly evicted him from subleased property at the Memorial Airfield. One appeal pertains to a request from Appellant to the President of the United States seeking compensation, under 25 U.S.C. § 229,¹ and Appellant's subsequent

¹ In relevant part, § 229, which was codified from statutes enacted in 1834 and 1959, provides, a mechanism for making an application to the Bureau of Indian Affairs (BIA) seeking redress from an Indian tribe or, failing that, from the Federal Government "[i]f any Indian, belonging to any tribe in amity with the United States, shall, within the Indian country, take or destroy the property of any person lawfully within such country."

correspondence to the Assistant Secretary regarding that claim. The other appeal pertains to Appellant's complaints that BIA is obstructing Appellant's attempt to obtain information through the Freedom of Information Act (FOIA).² Appellant's twin January 28, 2011, letters to the Assistant Secretary requested that the Assistant Secretary take action pursuant to 25 U.S.C. § 2.8 (appeal from inaction of official), and both appeals to the Board contend that he failed to respond to those requests.

The officials over whose administrative action (or alleged inaction) the Board has appellate jurisdiction are identified in 25 C.F.R. § 2.4(e). With exceptions not relevant here, the Board lacks jurisdiction to review action or alleged inaction by the Assistant Secretary. *See* 25 C.F.R. § 2.4(e); *Kozłowicz & Gardner Advocates, Inc. v. Superintendent, Uintah and Ouray Agency, and Deputy Assistant Secretary for Policy and Economic Development - Indian Affairs*, 50 IBIA 201, 202 (2009); *Pendleton v. Assistant Secretary - Indian Affairs*, 45 IBIA 133, 133 (2007); *see also Ballard v. Acting Eastern Oklahoma Regional Director*, 35 IBIA 255, 255 (2000) ("Just as it lacks authority to review decisions made by the Assistant Secretary, the Board also lacks authority to review inaction by the Assistant Secretary."). Accordingly, the Board lacks jurisdiction to review these appeals.³

² The § 229-related appeal is assigned Docket No. IBIA 11-074. The FOIA-related appeal is assigned Docket No. IBIA 11-075. Although not entirely clear, it appears that the exhibits attached to the § 229-related notice of appeal were intended to go with the FOIA-related notice of appeal, and vice versa.

³ In addition to the Board's lack of jurisdiction over the Assistant Secretary, the Board also lacks jurisdiction over appeals from FOIA decisions or delays in responding to FOIA requests. *See Simpson v. Southern Plains Regional Director*, 38 IBIA 127 (2002). Departmental regulations provide a separate process for FOIA appeals, *see* 43 C.F.R. §§ 2.28 - 2.33, which it appears that Appellant is using to pursue his FOIA complaints. *See* Notice of Appeal, Docket No. IBIA 11-074, Ex. 1a (Letter from Appellant to Assistant Secretary, Jan. 28, 2011, at 2) ("I have just filed an [a]ppeal with the [FOIA] Officer of the Department of the Interior.").

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.⁴

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁴ Our dismissal of these appeals does not affect two other appeals that are pending before the Board that also involve the dispute over the Memorial Airfield, both of which challenge alleged inaction by the Western Regional Director of BIA. *See Graven v. Western Regional Director*, Docket No. IBIA 11-047; *Memorial Airfield Corporation v. Western Regional Director* (rec'd Feb. 22, 2011; no docket no. assigned).