



INTERIOR BOARD OF INDIAN APPEALS

Faith O'Connor v. Rocky Mountain Regional Director, Bureau of Indian Appeals

55 IBIA 96 (05/30/2012)

Related Board case:

60 IBIA 73



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

FAITH O'CONNOR,)	Order Dismissing Appeal Without
Appellant,)	Prejudice
)	
v.)	
)	Docket No. IBIA 12-105
ROCKY MOUNTAIN REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	May 30, 2012

On May 3, 2012, the Board of Indian Appeals (Board) received a notice of appeal from Faith O'Connor (Appellant), pro se. Appellant sought review of the alleged failure of the Rocky Mountain Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to respond to Appellant's appeal from a September 28, 2004, decision of the Superintendent of BIA's Fort Peck Agency. According to Appellant, the last correspondence she received on her appeal was a letter dated December 7, 2004, from the Regional Director, acknowledging receipt of her appeal and informing her that a decision would be issued no later than 60 days after the Regional Director received "all the information" relevant to her appeal. The Board thus construes Appellant's appeal as filed pursuant to 25 C.F.R. § 2.8 (appeal from inaction of official). We now dismiss Appellant's appeal because it is premature.

Section 2.8 is a mechanism to prompt action by BIA. If a BIA official fails to act on a request (e.g., if a regional director fails to issue a decision in an appeal), the requesting party may make the official's inaction subject to appeal by following certain procedural requirements. The aggrieved party must:

- (1) Request in writing that the official take the action originally asked of him/her;
- (2) Describe the interest adversely affected by the official's inaction . . . ; [and]
- (3) State that, unless the official involved either takes action on the merits of the written request within 10 days of receipt of such request by the official, or establishes a date by which action will be taken, an appeal shall be filed in accordance with [25 C.F.R. Part 2].

25 C.F.R. § 2.8(a). Within 10 days of receiving such a request, the official must respond to the demand letter by making a decision on the underlying matter (or showing that a decision had already been made) or, alternatively, establishing a date by which a decision will be issued, not to exceed 60 days after his receipt of the request. *Id.* § 2.8(b). If, at the end of the 10-day period, the official has neither issued a decision nor set a date by which one will be issued, then the requesting party may appeal the official's inaction "to the next official"—in this case, to the Board. *Id.* We will dismiss as premature a § 2.8 appeal if the appellant has not *first* complied with the § 2.8(a) requirements. *See, e.g., Felter v. Western Regional Director*, 36 IBIA 98, 99 (2001).

Appellant's notice of appeal included a letter to the Regional Director, dated November 7, 2005, in which Appellant sought the status of her appeal. This letter did not conform to the § 2.8(a) requirements. Thus, on May 9, 2012, the Board issued an order directing Appellant to submit any letter that she had sent to the Regional Director that she believed fulfilled the § 2.8(a) requirements. Order, May 9, 2012, at 2.¹

The Board received Appellant's response to its May 9 order on May 23, 2012. The response included a copy of a letter dated May 21, 2012, from Appellant to the Regional Director that Appellant contends is her compliance with the requirements of § 2.8(a) (May 21 Demand). But, the Board's May 9 order was not an opportunity for Appellant to cure the deficiency in her appeal to the Board by *then* sending a demand to the Regional Director that complied with § 2.8; it was an opportunity to show that she had *already* complied with § 2.8. Assuming without deciding that Appellant's May 21 Demand complies with § 2.8, the Regional Director now has 10 days to respond to her demand. Thus, the Regional Director's alleged inaction is not ripe for review at this time, for which reason we dismiss this appeal as premature.

If the Regional Director fails to respond to Appellant's May 21 Demand within 10 days of his receipt of that letter, Appellant's appeal under § 2.8 will then be ripe for appeal to the Board. Thus, at any time after the 10 days have passed without a response from the Regional Director, Appellant may refile her appeal under § 2.8 with the Board.

¹ The Board also ordered Appellant to serve her appeal on the Regional Director and on the Assistant Secretary – Indian Affairs. Appellant confirmed that she complied with this portion of the Board's order.

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 this appeal without prejudice as premature.

I concur:

// original signed
Debora G. Luther
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge