



INTERIOR BOARD OF INDIAN APPEALS

Allan R. Toledo v. Acting Western Regional Director, Bureau of Indian Affairs

55 IBIA 276 (09/18/2012)



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

ALLAN R. TOLEDO,)	Order Docketing and Dismissing
Appellant,)	Appeal
)	
v.)	
)	Docket No. IBIA 12-153
ACTING WESTERN REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	September 18, 2012

On August 28, 2012, the Board of Indian Appeals (Board) received a notice of appeal from Allan R. Toledo (Appellant). Appellant seeks review of a July 16, 2012, letter (Decision) from the Acting Western Regional Director (Regional Director), Bureau of Indian Affairs (BIA), responding to a request from Appellant for legal representation in Federal court litigation filed by the Te-Moak Tribe against the Department of the Interior (Department) and other defendants, including Appellant as “Magistrate, Appellate Division of the Te-Moak Court of Indian Offenses.”¹ The Regional Director concluded that BIA did not consider Appellant to be a Federal employee, or acting within the scope of any Federal authorization, when Appellant and another individual issued certain decisions that are the subject of the Federal court litigation. The Regional Director advised Appellant that the Department’s Solicitor’s Office would not request that Appellant be represented by the U.S. Department of Justice in the litigation. We docket this appeal, but dismiss it because the Board does not have jurisdiction to review action by BIA or by the Solicitor’s Office regarding requests from individuals for legal representation in judicial litigation.

The Board’s jurisdiction is limited to the authority vested in it by regulation or otherwise delegated to it by the Secretary of the Interior. *See* 43 C.F.R. § 4.1(b)(1); *State of California v. National Indian Gaming Commission*, 44 IBIA 22, 22 (2006). As relevant to this appeal, the Board’s jurisdiction to review a BIA regional director’s action is limited to reviewing final actions or decisions issued under the regulations in Title 25 of the Code of Federal Regulations. *See* 43 C.F.R. §§ 4.330(a) and 4.331; 25 C.F.R. §§ 2.3 and 2.4(e);

¹ *See Te-Moak Tribe of Western Shoshone Indians, et al. v. United States Department of the Interior, et al.*, No. 3:11-CV-00762-RCJ-WGC (Verified First Amended Complaint for Declaratory and Injunctive Relief, D. Nevada, Jan. 23, 2012).

id. Parts 900 and 1000; *see generally Preckwinkle v. Pacific Regional Director*, 44 IBIA 45, 45 (2006) (the Board has jurisdiction to review decisions made by regional directors pursuant to 25 C.F.R. Chapter I); *Delmar v. Acting Navajo Regional Director*, 40 IBIA 184, 184 (2005) (discussing the scope of the Board’s jurisdiction). Here, Appellant’s request to BIA for legal representation did not refer to any provision in Title 25 C.F.R. as the basis for his request, nor does the Regional Director’s Decision purport to be action taken under Title 25.

In his appeal to the Board, Appellant also requests legal assistance and legal representation, citing 25 C.F.R. § 2.9(b)² and 43 C.F.R. § 4.332(c). The request appears to be limited to seeking assistance and representation in this appeal. But to the extent that Appellant suggests that these regulations provide the legal authority under which the Decision was issued, i.e., a basis for the Board’s jurisdiction, Appellant is mistaken. These regulations authorize BIA to provide an appellant with some assistance in an administrative appeal, but they have no application to a request for legal representation in Federal court litigation.³

The Regional Director’s Decision is not an action or decision that the Board has been granted authority to review.

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 for lack of jurisdiction.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Debora G. Luther
Administrative Judge

² Appellant cites 25 C.F.R. § 2.9(c), which discusses what a notice of appeal should include, but it is clear that Appellant intended to cite § 2.9(b).

³ Even for administrative appeals, the Board has held that these provisions “do not require BIA to obtain an attorney for the appellant, or to act as the appellant’s attorney by preparing the appellant’s appeal documents or otherwise advising the appellant on the merits of the appeal.” *Evans v. Sacramento Area Director*, 28 IBIA 124, 127 (1995); *see also Roach v. Muskogee Area Director*, 20 IBIA 244, 244 (1991).