



INTERIOR BOARD OF INDIAN APPEALS

Paul McEvers v. Rocky Mountain Regional Director, Bureau of Indian Affairs

56 IBIA 151 (02/05/2013)



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

PAUL McEVERS,)	Order Docketing and Dismissing
Appellant,)	Appeal
)	
v.)	
)	Docket No. IBIA 13-051
ROCKY MOUNTAIN REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	February 5, 2013

Paul McEvers (Appellant), as a member of the Blackfeet Tribal Business Council,¹ appealed to the Board requesting that it “assume jurisdiction” over his appeal to the Rocky Mountain Regional Director (Regional Director), Bureau of Indian Affairs (BIA) from a September 28, 2012, letter from BIA’s Blackfeet Agency Superintendent (Superintendent).² Notice of Appeal at 1. The Board docketed this appeal but dismisses it because the Board lacks jurisdiction to assume jurisdiction over the merits of an appeal that is pending before a BIA regional director.

As the basis for invoking the Board’s jurisdiction, Appellant asserts that Federal regulations “allow any party to move the Board . . . to assume jurisdiction subject to 43 CFR 4.337(b).” Notice of Appeal at 1. Appellant apparently is relying, mistakenly, on a regulation that does not apply to the facts of this case. It appears that Appellant is relying on 25 C.F.R. § 2.20(e), which provides that when the Assistant Secretary – Indian Affairs

¹ Appellant’s notice of appeal suggests that it was also filed on behalf of Woodrow Wells, Cheryl Little Dog, and William Old Chief, but because the appeal was only signed by Appellant, the Board of Indian Appeals (Board) considers him to be the only appellant.

² The September 28, 2012, letter responded to allegations, made by Appellant, Wells, Little Dog, and Old Chief, concerning the Blackfeet Tribal Business Council (Council). In the letter, the Superintendent noted that the tribal courts had recognized the Council as the ultimate authority on the Blackfeet Indian Reservation, and stated that other than assisting the Council in “ensuring that the business needs of the [Council] continue to function through the use of [e]xecutive [r]esolutions,” BIA would not involve itself in an internal tribal dispute. Letter from Superintendent to Little Dog, Sept. 28, 2012, at 1.

(Assistant Secretary) has asserted jurisdiction over an appeal that was filed with the Board, *see id.* § 2.20(c), and the Assistant Secretary (or his Deputy) fails to issue a timely decision, any party may move the Board to assume jurisdiction over the appeal, subject to limitations contained in § 4.337(b).³ Section 2.20, however, does not provide a source of authority for the Board to assume jurisdiction over an appeal that is still pending before a BIA regional director, and for which no final BIA decision has yet been issued. *See* 43 C.F.R. § 4.331(a) (appellants must exhaust administrative remedies within BIA before appealing to the Board).⁴

In urging the Board to take jurisdiction over the appeal, Appellant also contends that a decision from the Regional Director is overdue. If a BIA official fails to act on a request (e.g., if a regional director fails to issue a decision in an appeal), parties may make the official's inaction subject to appeal by following certain procedural requirements set forth in 25 C.F.R. § 2.8. Here, there is no indication that Appellant submitted a § 2.8 demand for action or decision to the Regional Director.⁵ But more importantly, as relevant to this appeal, Appellant is asking the Board to assume jurisdiction from the Regional Director over the *merits* of Appellant's appeal of the Superintendent's decision, which the Board could not do even in a proper § 2.8 appeal. The Board's jurisdiction over a § 2.8 appeal from inaction does not encompass a review of the underlying merits of the dispute. *Graven v. Western Regional Director*, 54 IBIA 171, 172 n.4 (2011); *Forest County Potawatomi Community v. Deputy Assistant Secretary – Indian Affairs*, 48 IBIA 259, 265-66 (2009). Thus, even if Appellant had complied with the procedural requirements of § 2.8 before filing this appeal, the Board's role would be limited to deciding whether the Regional

³ Section 4.337(b) provides that where the Board finds that one or more issues in an appeal or referral were decided by BIA based upon the exercise of discretionary authority committed to BIA, and the Board has not otherwise been permitted to adjudicate those issues, the Board shall dismiss the appeal or refer the issue(s) to the Assistant Secretary.

⁴ The word "final," as used in § 4.331, means final within BIA. By default, with limited exceptions, a BIA decision that is appealable to the Board is neither final for the Department of the Interior, nor legally effective, unless made effective by the Board, or the appeal period expires and no appeal has been filed. *See* 25 C.F.R. § 2.6; 43 C.F.R. § 4.314.

⁵ Nor is it apparent that a decision from the Regional Director is overdue. Appellant suggests that the Regional Director had 60 days after the filing of Appellant's notice of appeal to issue a decision. But under BIA's appeal regulations, after receiving an appellant's statement of reasons, interested parties have 30 days in which to respond. 25 C.F.R. § 2.11(c). The Regional Director's decision on the appeal is then due 60 days after the time for filing pleadings (including any extensions) has expired. *Id.* § 2.19(a).

Director must take action or issue a decision, and does not extend to determining how the Regional Director must act or decide a matter in the first instance.

In sum, Appellant has not identified any authority that would permit the Board to review the merits of the appeal before the Regional Director, and thus the Board dismisses the appeal for lack of jurisdiction.⁶

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 this appeal but dismisses it for lack of jurisdiction.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

⁶ Our dismissal of this appeal does not preclude Appellant from submitting a § 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. *See Roanhorse v. Navajo Regional Director*, 53 IBIA 126, 128 (2011).