



INTERIOR BOARD OF INDIAN APPEALS

Charlene J. Ramirez v. Great Plains Regional Director, Bureau of Indian Affairs

57 IBIA 218 (07/18/2013)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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CHARLENE J. RAMIREZ,)	Order Docketing and Dismissing
Appellant,)	Appeal
)	
v.)	
)	Docket No. IBIA 13-113
GREAT PLAINS REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	July 18, 2013

Charlene J. Ramirez (Appellant) appealed to the Board of Indian Appeals (Board) from the failure of the Bureau of Indian Affairs (BIA) to respond to a May 18, 2013, letter from Appellant to BIA requesting action pursuant to 25 C.F.R. § 2.8. Appellant owns both fee and trust interests in certain allotments, and asked BIA to address BIA’s practice of leasing the trust interests without addressing compensation for fee interest owners. Appellant’s request for action was addressed to both the Great Plains Regional Director (Regional Director), and the Acting Fort Berthold Agency Superintendent (Superintendent).

The Board ordered the Regional Director to provide a status report on BIA’s consideration of Appellant’s request for action. On July 11, 2013, the Board received a memorandum from the Regional Director, informing the Board that on July 5, 2013, the Superintendent issued a decision in response to Appellant’s § 2.8 request for action. The Superintendent’s decision, which concluded that it is the lessee’s responsibility to ensure that fee interest owners receive compensation for their interests, advised Appellant that she could appeal the decision to the Regional Director. On July 10, 2013, the Board received from Appellant a copy of a notice of appeal that she apparently has filed to appeal the Superintendent’s decision to the Regional Director.¹ On July 15, 2013, the Board received a response from Appellant to the Regional Director’s status report, in which Appellant states that the Superintendent’s decision “does not include an appropriate response to any

¹ We note that although the Superintendent’s decision erroneously advised Appellant that an appeal must be filed directly with the Regional Director, Appellant’s notice of appeal is properly addressed to the Superintendent, with a copy to the Regional Director. *See* 25 C.F.R. § 2.9 (procedures for appeals within BIA).

of my concerns.” Letter from Appellant to Board, July 12, 2013, at 1. Appellant reiterates her concern that BIA should address “leases the BIA has entered into involving fee patent land where no separate agreement for appropriate compensation [for the fee interests] is in place.” *Id.* at 3.²

Section 2.8 is an action-prompting mechanism that allows parties to seek action or a decision by a BIA official on the merits of an issue, and if the official fails to respond within the time period allowed, to appeal the official’s inaction to the next level of review. *See McEvers v. Rocky Mountain Regional Director*, 57 IBIA 99, 99 (2013); *Lubenuau v. Acting Northwest Regional Director*, 56 IBIA 45, 48 n.4 (2012). The Board’s role in a § 2.8 appeal is limited to deciding whether BIA must take action or issue a decision, and does not include determining how BIA must act on or how it must decide a matter. *McEvers*, 57 IBIA a 99-100. Thus, when BIA issues a decision in response to a § 2.8 request, an appeal to the Board from BIA’s inaction becomes moot, *id.* at 100, even where, as here, an appellant may contend that the BIA decision does not appropriately address her concerns on the merits.

In the present case, Appellant addressed her § 2.8 request to both the Superintendent and the Regional Director. Because the Superintendent has now taken action by issuing a decision, and because the Board does not have authority to dictate to BIA whether Appellant’s request must first be addressed at the agency or regional level, the Superintendent’s decision renders this § 2.8 appeal moot. *See Lubenuau*, 56 IBIA at 49. Appellant’s remedy in challenging the Superintendent’s decision as an inappropriate response is through her appeal to the Regional Director. Once the Regional Director issues a decision on Appellant’s appeal from the Superintendent’s decision, if Appellant believes that the Regional Director’s decision fails to address her concerns, she may appeal that decision to the Board and the Board will be able to address the Regional Director’s decision on the merits.³

² Appellant and her family members apparently own trust interests in certain allotments, but also hold fee interests in the allotments, and in one case hold a majority interest in the allotment in fee. Appellant notes that BIA has no authority to lease fee interests, but contends that BIA should ensure that fee owners are compensated by tenants who lease the trust interests in the allotments, and then use the allotments—i.e., the undivided trust and fee interests—without compensating the fee interest owners.

³ The Board strongly encourages the voluntary resolution of disputes, and in this case would strongly encourage the Regional Director and Appellant to explore whether such resolution may be achieved for Appellant’s appeal from the Superintendent’s decision. BIA’s appeal regulations include a 60-day timetable for a BIA official to decide an appeal after the time for pleadings has expired, *see* 25 C.F.R. § 2.19(a), but nothing precludes an appellant and

(continued...)

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.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Debra G. Luther
Administrative Judge`

(...continued)

BIA from agreeing to extend that time period in the interest of settling the dispute. In the absence of voluntary resolution, however, our dismissal of this appeal does not preclude Appellant from submitting a new § 2.8 request to the Regional Director if no decision on Appellant's new appeal is issued within the time period provided by § 2.19(a).