INTERIOR BOARD OF INDIAN APPEALS

Vincent Garcia v. Eastern Nevada Agency Superintendent, Bureau of Indian Affairs and Western Regional Director, Bureau of Indian Affairs

58 IBIA 42 (09/26/2013)

Related Board case:
62 IBIA 43

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

VINCENT GARCIA, Appellant,	)	Order Docketing and Dismissing Appeal, and Referring Appeal to the Regional Director
v.	)	
EASTERN NEVADA AGENCY SUPERINTENDENT, BUREAU OF INDIAN AFFAIRS, and WESTERN REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellees.	)	Docket No. IBIA 13-148
	)	September 26, 2013

On September 13, 2013, the Board of Indian Appeals (Board) received an appeal from Vincent Garcia (Appellant), which apparently seeks review of a July 11, 2013, decision of the Eastern Nevada Agency Superintendent (Superintendent), Bureau of Indian Affairs (BIA), or possibly from purported inaction by the Western Regional Director (Regional Director), BIA. The Superintendent's decision responded to Appellant's request for clarification and a decision regarding the cancellation and reassignment of Floyd Bill's and Chester Knight's land assignments on the South Fork Reservation.[1] We docket but dismiss this appeal as premature because the Superintendent's decision is not appealable to the Board.

In the notice of appeal, Appellant states that he has not yet received a response from the Regional Director, and thus he is "forwarding" his appeal to the Board for a decision.[2]

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[1] Garcia's notice of appeal states that it is filed on behalf of Bill and Knight, but it is only signed by Garcia. Thus, the Board considers Garcia to be the only appellant in this appeal.

[2] Prior to the issuance of the Superintendent's decision, Appellant sent a "notice of appeal from inaction" to the Regional Director, which the Regional Director received on July 8, 2013, although it does not appear that Appellant complied with the regulations prior to appealing the Superintendent's purported inaction. *See* 25 C.F.R. § 2.8. Then, on July 11, 2013, the Superintendent issued a decision in response to Appellant's request. The decision did not include instructions for filing an appeal to the Regional Director. *See id.* § 2.7 (requirements for written decision, including notice of appeal rights to all interested parties

(continued…)

But 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. 43 C.F.R. § 4.1(b)(1). With exceptions not relevant here, the Board lacks jurisdiction to review action by a BIA superintendent. *Id*. § 4.331(a); *Marruffo v. Southern California Agency Superintendent*, 53 IBIA 276, 277 (2011) (dismissing appeal); *Gardner v. Uintah and Ouray Agency Superintendent*, 51 IBIA 166, 167 (2010) (same). Instead, Appellant must first exhaust his appeal rights before the Regional Director. After the Regional Director issues a decision, and if that decision adversely affects Appellant, he may then appeal the Regional Director's decision to the Board. 25 C.F.R. § 2.4(e); 43 C.F.R. § 4.331(a); *Demery v. Standing Rock Agency Superintendent*, 50 IBIA 136, 137 (2009). In addition, to the extent that Appellant is seeking to appeal the Regional Director's purported inaction to the Board, he has not shown that a decision by the Regional Director is overdue or that he first complied with the requirements of § 2.8.

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 dockets this appeal but dismisses it for lack of jurisdiction, and refers the appeal to the Regional Director for consideration.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge

(…continued)
known to the decision maker). The Board contacted the Regional Director's office to determine the status of the matter and was advised that the Regional Director would be responding to Appellant.