



## INTERIOR BOARD OF INDIAN APPEALS

Michele Kanim Enick Wood v. Northwest Regional Director, Bureau of Indian Affairs

58 IBIA 216 (03/10/2014)



# 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

MICHELE KANIM ENICK WOOD,	)	Order Dismissing Appeal
Appellant,	)	
	)	
v.	)	
	)	Docket No. IBIA 13-124
NORTHWEST REGIONAL	)	
DIRECTOR, BUREAU OF INDIAN	)	
AFFAIRS,	)	
Appellee.	)	March 10, 2014

Michele Kanim Enick Wood (Appellant) appealed to the Board of Indian Appeals (Board) from a June 11, 2013, decision (Decision) of the Northwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA), instructing BIA’s Puget Sound Agency Superintendent (Superintendent) to consider Carolyn Lubenau as the individual with the capacity to execute Indian Self-Determination and Education Assistance Act (ISDA) contract amendments on behalf of the Snoqualmie Tribe (Tribe), based on evidence indicating that Lubenau was elected as the Tribe’s Chairperson in a May 11, 2013, tribal election. Decision at 2.<sup>1</sup> In her notice of appeal, Appellant did not contend that she is the Tribe’s Chairperson, but questioned Lubenau’s qualification for membership in the Tribe, and thus her qualification to hold office, and Appellant argued that BIA should withhold ISDA funds to the Tribe until enrollment issues within the Tribe are resolved.

We dismiss the appeal because Appellant has failed to demonstrate that she, as an individual tribal member, has standing to bring an appeal from the Regional Director’s decision to recognize Lubenau as having the capacity to execute the ISDA contract amendments on behalf of the Tribe.

### Discussion

Upon receipt of the appeal, the Board ordered briefing on whether to make the Decision effective, pursuant to 25 C.F.R. § 2.6. See Pre-Docketing Notice and Order, July 22, 2013. On August 14, 2013, the Board issued an order making the Decision

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<sup>1</sup> The Decision found that it was necessary to execute a contract amendment in order to transfer funds to the Tribe, and in order to do so, it was necessary to decide who had authority to execute the amendment on behalf of the Tribe.

effective immediately. In doing so, the Board noted several possible threshold obstacles to Appellant's appeal, one of which was Appellant's apparent lack of standing. See Order Making Decision Effective, Aug. 14, 2013, at 3 (citing *Wadena v. Midwest Regional Director*, 47 IBIA 21, 27 (2008) (individual tribal members lack standing to bring an action based upon their personal assessment of what is in the best interest of the tribe); *Bullcreek v. Western Regional Director*, 40 IBIA 191, 194 (2005) (same)). In an order scheduling briefing on the merits, the Board ordered Appellant to demonstrate, as a threshold matter, that she has standing to bring the appeal. Order Setting Briefing Schedule, Aug. 14, 2013, at 1-2. The Board also ordered Appellant to address whether the appeal should be dismissed for failure to exhaust tribal remedies, and whether her appeal is, in substance, an attempt to have the Board adjudicate a tribal enrollment issue, over which the Board would lack jurisdiction. *Id.* The Board advised Appellant that she had the burden to demonstrate that she has standing to bring the appeal.

Appellant sought and was granted two extensions for filing an opening brief, but did not do so. In its Answer Brief, the Tribe seeks dismissal of the appeal for failure to prosecute, based on Appellant's failure to file an opening brief. Appellant did not file a reply brief.

When the issue of standing is raised in an appeal, an appellant has the burden to demonstrate that she has standing. *Phillip Del Rosa v. Pacific Regional Director*, 58 IBIA 191, 191 (2014); *Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas v. Acting Southern Plains Regional Director*, 56 IBIA 267, 268 (2013); *Friends of Our Pyramid Lake Reservation v. Western Regional Director*, 55 IBIA 272, 273 (2012). Appellant did not respond in substance to the Board's order for her to demonstrate standing, and thus has failed to meet her burden. See *Del Rosa*, 58 IBIA at 192; *Kickapoo Tribe*, 56 IBIA at 268.

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 dismisses the appeal for lack of standing.<sup>2</sup>

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

\_\_\_\_\_  
//original signed  
Thomas A. Blaser  
Administrative Judge

<sup>2</sup> Because the Board dismisses the appeal for lack of standing, we need not address whether a failure to exhaust tribal remedies or a lack of subject matter jurisdiction over enrollment disputes would also require dismissal.