



INTERIOR BOARD OF INDIAN APPEALS

Wichita and Affiliated Tribes v. Acting Southern Plains Regional Director, Bureau of
Indian Affairs

58 IBIA 263 (05/23/2014)



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

WICHITA AND AFFILIATED TRIBES,)	Order Docketing and Dismissing
Appellant,)	Appeal
)	
v.)	
)	Docket No. IBIA 14-096
ACTING SOUTHERN PLAINS)	
REGIONAL DIRECTOR, BUREAU)	
OF INDIAN AFFAIRS,)	
Appellee.)	May 23, 2014

The Wichita and Affiliated Tribes (Tribe) sought review of the alleged failure of the Acting Southern Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to make a decision or to set a date for making a decision on an underlying appeal by the Tribe from a June 7, 2013, decision of the Anadarko Agency Superintendent, BIA.¹ The Tribe submitted a request to the Regional Director, pursuant to 25 C.F.R. § 2.8, for a decision on the underlying appeal.² The Regional Director responded to the Tribe on April 9, 2014, but did not issue a final decision or set a date for doing so. The Tribe appealed to the Board of Indian Appeals (Board), contending that the Regional Director's response did not comply with the requirements of § 2.8. The Board docketed this appeal but dismisses it, as an interlocutory appeal, for lack of jurisdiction.

Background

The Tribe submitted an initial request, on January 14, 2014, pursuant to § 2.8, to the Regional Director for a decision or a date by which a decision would be made on the merits of the underlying appeal. Having received no response to its request, on February 25, 2014, the Tribe filed with the Regional Director what it styled as a "notice of appeal," in which, pursuant to § 2.8, it again demanded a final decision on the underlying

¹ The Superintendent's decision in the underlying appeal concerns a proposed consolidation and exchange of lands held in trust jointly for the Tribe, the Caddo Nation, and the Delaware Nation.

² Section 2.8 of 25 C.F.R. provides a mechanism for appealing from inaction by a BIA official, after the appellant has requested action pursuant to the requirements of § 2.8.

appeal. In support of its “appeal,” the Tribe filed with the Regional Director, on March 27, 2014, a “statement of reasons” in which the Tribe set forth two arguments: (1) that BIA failed to comply with § 2.8; and (2) that the Superintendent’s June 7, 2013, decision should be reversed or vacated on the merits.³ The Regional Director responded to the Tribe’s “appeal” by issuing the April 9, 2014, decision (Decision), but he did not decide the merits of the underlying appeal or set a date for doing so. Instead, the Regional Director concluded that § 2.8 was “inapplicable at this time” because he “consider[ed] the Administrative Record incomplete without allowing the Caddo Nation’s request to submit a response to the Statement of Reasons.” Decision at 1. The Regional Director granted the Caddo Nation a 30-day extension to respond to the statement of reasons. *Id.*⁴

On May 8, 2014, the Tribe appealed to the Board, contending that the Decision did not conform to the requirements of § 2.8. As relief, the Tribe requests that the Board reverse the latest 30-day extension and direct the Regional Director to issue a decision on the merits of the underlying appeal.

Discussion

We conclude that this is an interlocutory appeal of a procedural decision by the Regional Director to extend the briefing schedule for the Caddo Nation and, as such, the Board lacks jurisdiction and must dismiss this appeal. But even reviewing the Decision as “inaction” because it does not issue a decision or set a date for a decision on the merits, we

³ In its merits argument, the Tribe argued that but for delays caused or allowed by BIA, the proposed consolidation and exchange of trust lands would have been completed as the tribes agreed to in 2007. The Tribe acknowledged that the Caddo Nation “has passed a resolution reversing its stance, despite being the primary beneficiary and proponent of the member-based formula utilized in the 2007 agreement,” and that the Caddo Nation “is currently experiencing turmoil within its governance structure,” but argued that it is in the best interests of the tribes to approve the proposal without further delay. Statement of Reasons, Mar. 27, 2014, at 3-4 (unnumbered) (Notice of Appeal to Board, Ex. 14).

⁴ Although not entirely clear, it appears that this extension applies both to the Caddo Nation’s response to the Tribe’s March 27 statement of reasons in the § 2.8 “appeal,” and to the Caddo Nation’s response to the Tribe’s September 11, 2013, statement of reasons in the underlying appeal. Previously, the Caddo Nation sought a total of five extensions of time to respond to the Tribe’s September 11, 2013, statement of reasons. *See* Notice of Appeal to Board at 2. The Caddo Nation’s fifth request for an extension, until March 11, 2014, was submitted in the time between the Tribe’s initial § 2.8 request and the § 2.8 “appeal,” and the Caddo Nation evidently did not file a response by the time of the April 9 Decision. *See id.*

decline to grant relief to the Tribe at this time. The Regional Director's action in granting the extension means that the matter is not ripe for a decision on the merits, and the Regional Director is working on the Tribe's request. Therefore, we dismiss this appeal.

The Board's jurisdiction extends only to final decisions by BIA officials, as set forth in 43 C.F.R. § 4.331: "Any interested party affected by a *final* administrative action or decision of an official of the [BIA] . . . may appeal to the Board" Emphasis added. At least at this stage of the proceedings, the Board does not have jurisdiction to review the Regional Director's decision to grant the extension to the Caddo Nation.⁵ As we said in *Yakama Nation v. Northwest Regional Director*, "[t]he word 'final' [in § 4.331] denotes a dispositive decision on the substantive matter before BIA, and does not contemplate review of an interim and purely procedural ruling, such as whether to stay appeal proceedings, *modify a briefing schedule*, etc." 47 IBIA 117, 118 (2008) (emphasis added). A procedural "decision" to stay or to extend the briefing schedule in an appeal does not constitute a "final" decision when its only effect is to delay disposal of the substantive matter. As this is an interlocutory appeal of the Regional Director's decision to grant an extension to the Caddo Nation, the appeal must be dismissed. See 43 C.F.R. § 4.331; *Yakama Nation*, 47 IBIA at 118; *High Desert Recreation, Inc. v. Acting Western Regional Director*, 52 IBIA 30, 32 (2010); *Interim Executive Council of the United Auburn Indian Community v. Acting Sacramento Area Director*, 28 IBIA 197, 198 (1995).⁶

Even if we construe the Decision as "inaction" because it does not comply with the terms of § 2.8, we would decline to grant relief to the Tribe. The requirements in § 2.8 to issue within 10 days, or within that time period establish a deadline for making a merits decision, necessarily *presumes* that a matter is ripe for a decision on the merits. To the extent, if any, that the underlying appeal was previously ripe for a final decision, once the Regional Director granted the latest extension to the Caddo Nation, the matter was no longer ripe for a final decision. The Board has, as a general rule, dismissed a § 2.8 appeal

⁵ Nor does the Board have supervisory authority over BIA.

⁶ For the Board to consider this appeal would also defy logic as shown by a hypothetical we posed in *Yakama Nation*:

If a party's statement of reasons w[as] due in 5 days and the party obtained a 20-day extension from BIA, the ruling would remain ineffective during the appeal period [pursuant to the automatic stay provision in 25 C.F.R. § 2.6(b)], which would then cause the statement of reasons to remain due within the original 5 days.

Yakama Nation, 47 IBIA at 119-20. Moreover, the Board's review of such decisions may also be expressly precluded by 43 C.F.R. § 4.330(b)(2): "Except as otherwise permitted . . . the Board shall not adjudicate . . . [m]atters decided by the [BIA] through exercise of its discretionary authority."

when it was apparent that BIA was working on an appellant's request and the matter was not yet ripe for final BIA action. *See, e.g., Shivwits Band of Paiutes v. Western Regional Director*, 44 IBIA 2, 3 (2006) (dismissing § 2.8 appeal when the matter was not ripe for a final BIA decision at the time of the tribe's request and the regional director was working on the request); *Paiute Indian Tribe of Utah v. Acting Western Regional Director*, 40 IBIA 208, 209 (2005) (dismissing § 2.8 appeal when the matter was not ripe for a final BIA decision); *Paiute Indian Tribe of Utah v. Western Regional Director*, 40 IBIA 163, 164 (2004) (dismissing § 2.8 appeal when the regional director needed additional information to issue a decision). And for the Board to grant relief on a § 2.8 demand, in a situation such as this where an extension of the briefing schedule means the matter is not ripe, would appear inconsistent with the limitation on the Board's jurisdiction discussed *supra* at 265. Under the circumstances, we conclude that dismissal of the § 2.8 appeal is appropriate.⁷

Conclusion

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 the appeal.

I concur:

 // original signed
Thomas A. Blaser
Administrative Judge

 //original signed
Steven K. Linscheid
Chief Administrative Judge

⁷ Although we dismiss this appeal, we note that the Regional Director undoubtedly should at least have responded to the Tribe's January 14, 2014, initial § 2.8 request. The Board expresses no view on whether procedural delays in proceedings before BIA might ever provide grounds for the Board to prompt action under § 2.8. Our review of the current posture of this case and the Tribe's notice of appeal does not convince us that this is, at present, such a case.

As the latest 30-day extension granted to the Caddo Nation expired during this appeal, nothing would preclude the Tribe from making a new § 2.8 demand on the Regional Director or seeking review by a Departmental official with supervisory authority over a BIA regional director.