



INTERIOR BOARD OF INDIAN APPEALS

Uncompahgre Descendant, Lynda Kozlowicz, and Uinta Descendant, Edson Gardner v.
Western Regional Director, Bureau of Indian Affairs

59 IBIA 133 (09/12/2014)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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UNCOMPAHGRE DESCENDANT,)	Order Docketing and Dismissing
LYNDA KOZLOWICZ, and UINTA)	Appeal
DESCENDANT, EDSON GARDNER,)	
Appellants,)	
)	
v.)	Docket No. IBIA 14-126
)	
WESTERN REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	September 12, 2014

On September 2, 2014, the Board of Indian Appeals (Board) received an “Appeal for Declaratory Relief” (Appeal) from Lynda Kozlowicz and Edson Gardner (collectively Appellants),¹ in which Appellants file a “claim for declaratory judgment that the Ute Tribe² do[es] not under Treaty, have rights of . . . citizenship of the Uncompahgre Descendant and the Uinta Descendant.” Appeal at 3. Appellants’ appeal appears to have been prompted by a July 18, 2014, decision (Decision) of the Western Regional Director (Regional Director), Bureau of Indian Affairs.³

In the Decision, the Regional Director declined to accept an appeal by Kozlowicz from “inaction” of officials, apparently relating to the statutory authority for the Tribe’s interpretation of tribal law regarding eligibility for membership. *See* Decision at 1. The Regional Director found that it was unclear what rights Kozlowicz alleged were violated or

¹ The appeal is styled “Uncompahgre Descendent, Linda Kozlowicz, et. al., and Uinta Descendant, Edson Gardner, et al.” The appeal is only signed by Kozlowicz and Gardner and the references to “et al.” are not explained by Appellants.

² We construe this as a reference to the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah (Tribe).

³ Appellants attach a copy of the Decision, but refer to it only once, to assert that the Board is the proper venue for their claim. *See* Appeal at 2 ¶ 6. Except for the assertion regarding venue, Appellants do not discuss in substance, or otherwise appear to allege error in, the Decision itself.

exactly what was being appealed, and also suggested that Kozlowicz must first exhaust tribal remedies with respect to any complaints against the Tribe. *Id.*

We dismiss this appeal because it is untimely with respect to Kozlowicz, and even assuming it is timely with respect to Gardner, the appeal states no claim over which the Board has jurisdiction.

As an appeal from the Decision, it appears that the appeal is untimely, at least with respect to Kozlowicz. A notice of appeal from a decision of a BIA regional director must be filed with the Board “within 30 days after receipt by the appellant of the decision from which the appeal is taken.” 43 C.F.R. § 4.332(a). Untimely appeals must be dismissed for lack of jurisdiction. In the present case, the Decision included accurate instructions for filing an appeal with the Board. The U.S. Postal Service’s Track & Confirm website indicates that the Decision was delivered to Kozlowicz on July 24, 2014. Calculated from that delivery date, the deadline for filing an appeal with the Board expired on August 25, 2014.⁴ Appellants filed their appeal with the Board by mailing it on August 28, 2014, as shown on the U.S. Postal Service-generated postage affixed to the envelope. *See* 43 C.F.R. § 4.310(a) (date of filing rules). Thus, at least with respect to Kozlowicz, the appeal is untimely, and if Gardner also received the appeal more than 30 days before Appellant’s August 28 filing date, the appeal would be untimely for him as well.

Even assuming that the appeal is timely for Gardner, we can discern in the appeal no claim for relief over which the Board has jurisdiction. In addition to certain subject matter limitations, and with exceptions not relevant here, the Board’s jurisdiction is limited to reviewing timely appeals from final actions or decisions by certain BIA officials. The Board is not a court of general jurisdiction. *Gardner v. Uintah and Ouray Superintendent*, 51 IBIA 166, 168 (2010). To the extent Gardner seeks to present a case or controversy between himself and the Tribe, and seeks declaratory relief against the Tribe, the Board has no jurisdiction over such a claim. *See id.* at 167. To the extent that Gardner would have standing to appeal from the Decision,⁵ the claim presented is not within the limited ground upon which the Regional Director decided Kozlowicz’s appeal, *see* 43 C.F.R. § 4.318

⁴ The 30th day after Kozlowicz received the decision was Saturday, August 23, 2014. When the last day for filing a document with the Board falls on a Saturday, Sunday, or Federal holiday, the time period is automatically extended to the next business day, which in this case was Monday, August 25, 2014. 43 C.F.R. § 4.310(c)(2).

⁵ The Decision is addressed to Kozlowicz and appears to respond solely to a letter from her. Because we dismiss the appeal on other grounds, we need not address whether the Decision adversely affects Gardner. *See* 25 C.F.R. § 2.2 (definitions of “appellant” and “interested party”).

(scope of review), i.e., that she had failed to articulate her claim and failed to exhaust tribal remedies.⁶ And to the extent Gardner seeks an adjudication involving a tribal enrollment dispute, the Board would lack subject matter jurisdiction, regardless of whether the issue could be considered to be within the scope of the Regional Director’s decision. 43 C.F.R. § 4.330(b)(1); *Gardner*, 51 IBIA at 167.

Having reviewed Appellants’ Appeal for Declaratory Relief, the Board finds that it is untimely with respect to Kozlowicz, and that even if it is timely for Gardner, he has not set forth any claim over which the Board has jurisdiction or upon which the Board may grant relief.

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 Though not clear, it appears that Gardner contends that the Tribe and its members have usurped the treaty rights “of citizens of Uinta Descendant and the Uncompahgre Descendant,” an apparent reference to Appellants and possibly others they believe are similarly situated. This appeal is the latest in a series of appeals that have been filed by Kozlowicz and Gardner, apparently relating to descendants of “Mixed-Blood Utes,” who were subject to the Ute Partition and Termination Act of 1954, 25 U.S.C. §§ 677 et seq. See *Gardner v. Western Regional Director*, 46 IBIA 79, 79-80 (2007); see also *Tabegauche/Uncompahgre Indian Tribal Members v. Western Regional Director*, 59 IBIA 41 (2014).