



INTERIOR BOARD OF INDIAN APPEALS

Richard J. Steward v. Pacific Regional Director, Bureau of Indian Affairs

61 IBIA 70 (07/02/2015)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ARLINGTON, VA 22203

RICHARD J. STEWARD,)	Order Docketing and Dismissing
Appellant,)	Appeal
)	
v.)	
)	Docket No. IBIA 15-091
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	July 2, 2015

On June 22, 2015, the Board of Indian Appeals (Board) received a notice of appeal from Richard J. Steward (Appellant) from alleged inaction by the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), based on her failure to respond to a May 27, 2015, appeal filed by Appellant with the Regional Director seeking her review of alleged inaction by BIA’s Central California Agency Superintendent (Superintendent).

We docket but summarily dismiss this appeal because Appellant’s May 27, 2015, appeal to the Regional Director was not ripe for a decision under BIA’s appeal procedures. In addition, a May 22, 2015, decision issued by the Superintendent undoubtedly rendered moot Appellant’s appeal to the Regional Director from the Superintendent’s alleged failure to act, and thus no relief would be available from the Board, even if this appeal were otherwise properly before the Board.

Discussion

This is an appeal to the Board from alleged inaction by the Regional Director, brought pursuant to 25 C.F.R. § 2.8, which provides procedures that an appellant may follow for making a BIA official’s inaction subject to appeal.¹ The underlying dispute apparently involves a November 2014 tribal election by the Elem Indian Colony and a

¹ Under § 2.8, if an appellant submits a proper demand for action to a BIA official, the official must either make a decision on the merits within 10 days of receipt of the Appellant’s demand for action, or within that same time period establish a reasonable later date for issuing a decision, not to exceed 60 days from the date of the request. 25 C.F.R. § 2.8(b); *see also One Hundred and Ninety-One Navajo Landowners v. Navajo Regional Director*, 57 IBIA 271, 279 n.13 (2013) (explaining the meaning of “on the merits”).

request from Appellant to the Superintendent not to recognize, or to withdraw recognition of, the tribal government. But it is well established that the scope of a § 2.8 appeal from alleged inaction is limited to the issue of whether a BIA official failed to comply with § 2.8 by not taking action after being presented with a proper demand, and does not include the underlying merits of a dispute, or directing an official *how* to act. *Forest County Potawatomi Community v. Deputy Assistant Secretary - Indian Affairs*, 48 IBIA 259, 266 (2009); *Midthun v. Rocky Mountain Regional Director*, 43 IBIA 258, 264 n.7 (2006).

The current appeal involves two levels of alleged inaction. On April 8, 2015, Appellant appealed to the Regional Director from the Superintendent's alleged failure to respond to correspondence from Appellant concerning the tribal election. On April 17, 2015, the Regional Director responded to that appeal, stating, among other things, that by copy of her letter she was directing the Superintendent to review Appellant's request and issue a decision within 10 days of receipt or establish a reasonable date for issuing a decision. On April 23, 2015, the Superintendent wrote to Appellant and committed to issuing a decision by May 22, 2015.

By letter dated May 22, 2015, postmarked May 26, 2015, the Superintendent issued a decision to Appellant in response to his various letters to the Superintendent. Letter from Superintendent to Appellant, May 22, 2015 (Superintendent's Decision). The Superintendent included appeal rights for appealing the decision to the Regional Director. *Id.* at 2.

On May 27, 2015, before receiving the Superintendent's Decision, Appellant filed another § 2.8 appeal to the Regional Director from the Superintendent's alleged failure to have issued a decision. Letter from Appellant to Superintendent, May 27, 2015.²

Appellant then filed the present appeal to the Board. Appellant contends that the Superintendent's failure to meet the May 22 deadline was the subject of his May 27, 2015, § 2.8 appeal to the Regional Director, "and the Regional Director's failure to respond to [the May 27] appeal within 10[]days or establish a reasonable later date . . . is the substance of this § 2.8 . . . appeal[] to the [Board]." Notice of Appeal, June 16, 2015, at 2.

Appellant errs in suggesting that the Regional Director was obligated to decide his May 27 appeal within 10 days of receipt, or within 10 days to have established a reasonable later date for deciding the appeal. Under BIA's appeal regulations, interested parties may file an answer within 30 days from receipt of an appellant's statement of reasons, and the

² An appeal to a BIA regional director is filed with the BIA superintendent whose action or inaction a party seeks to appeal. 25 C.F.R. § 2.9(a).

BIA official deciding the appeal is to do so “within 60 days after all time for pleadings (including all extensions granted) has expired.” 25 C.F.R. § 2.19(a). An appellant cannot use § 2.8 to shorten the normal regulatory timelines for a BIA official to decide an appeal.³ Even under the strictest timetable, a decision by the Regional Director on Appellant’s May 27 appeal is not yet due. *Quinault Indian Nation v. Northwest Regional Director*, 56 IBIA 3, 4 (2012).

Even if this appeal were otherwise properly before the Board, the fact remains that the Superintendent did issue a decision, dated May 22, 2015, and thus Appellant’s May 27 § 2.8 appeal to the Regional Director was moot by the time it arrived and no relief would be available from the Board against the Regional Director. Whether or not the Superintendent’s Decision was mailed after the May 22 deadline, or even back dated (as Appellant alleges), is irrelevant for purposes of § 2.8. Section 2.8 is an action prompting mechanism. It contains no separate relief, once a decision has been issued on a request, for allegedly missing a deadline. Thus, we would have no basis to order the Regional Director to take action on Appellant’s May 27 appeal.

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 this appeal.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

³ Moreover, the filing of the appeal, by itself, could not impliedly serve as a § 2.8 demand for action on that very same appeal.