



INTERIOR BOARD OF INDIAN APPEALS

Jennifer M. Reeder v. Acting Southern Plains Regional Director, Bureau of Indian Affairs

61 IBIA 161 (07/31/2015)

Denying Petition for Reconsideration of:
61 IBIA 74



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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JENNIFER M. REEDER,)	Order Denying Petition for
Appellant,)	Reconsideration
)	
v.)	
)	Docket No. IBIA 14-032-1
ACTING SOUTHERN PLAINS)	
REGIONAL DIRECTOR, BUREAU)	
OF INDIAN AFFAIRS,)	
Appellee.)	July 31, 2015

On July 8, 2015, the Board of Indian Appeals (Board) dismissed as moot this appeal by Jennifer M. Reeder (Appellant) from a September 12, 2013, decision of the Acting Southern Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA), in which the Regional Director found that BIA was unable to accept a resolution purportedly adopted by the Caddo Nation Tribal Council to retrocede to BIA the Tribe’s Indian Self-Determination and Education Assistance Act (ISDA) contracts and programs. 61 IBIA 74. After allowing responses to the Regional Director’s suggestion of mootness, apparently based on an intervening tribal election, and receiving none, the Board dismissed the appeal as moot.

On July 20, 2015, the Board received from Appellant a Petition for Reconsideration. Appellant contends that she did in fact respond to the Regional Director’s suggestion of mootness, and that she mailed her response to the Board. Appellant encloses with her Petition a copy of a Response to Suggestion of Mootness, dated June 23, 2015 (Response), which she contends was filed with the Board and also served on the Assistant Secretary – Indian Affairs (Assistant Secretary). Appellant provides evidence that she mailed a copy of the Response to the Assistant Secretary on June 24, 2015, but no evidence that she mailed a copy to the Board, as alleged. To date, the Board has not received the Response, except for the copy included with the Petition for Reconsideration. In the Response, Appellant contends that the appeal is not moot.

“Reconsideration of a decision of the Board will be granted only in extraordinary circumstances.” 43 C.F.R. § 4.315.

Even assuming that Appellant timely filed the Response with the Board, and that the Board’s summary dismissal of the appeal as moot based on the absence of such a response

should be reconsidered, we would nevertheless deny reconsideration because we would still reach the same conclusion: the appeal is moot.

An appeal may become moot when nothing turns on its outcome. *Scotts Valley Band of Pomo Indians v. Pacific Regional Director*, 59 IBIA 56, 57 (2014), and cases cited therein. In the present appeal, Appellant challenged the Regional Director's decision refusing to accept what Appellant contended was a properly enacted tribal resolution to retrocede—i.e., return—the Tribe's ISDA contracts and programs to BIA so that BIA would directly administer those programs. *See* 25 C.F.R. § 900.240 (What does retrocession mean?).

In arguing that her appeal is not moot, Appellant contends that BIA's refusal to accept the retrocession resolution has caused continuing injury to the Tribe because had BIA accepted retrocession, the Tribe would have avoided costs associated with fraud and mismanagement of its ISDA contracts and would have avoided BIA's emergency reassumption of the Tribe's ISDA programs, which, according to Appellant, occurred in 2014. Petition for Reconsideration, July 15, 2015, at 1-2.

But BIA's reassumption of the programs that were the subject of the retrocession resolution only supports a finding that the appeal is moot. *See* 25 C.F.R. § 900.246 (What does reassumption mean?). If, as Appellant contends, BIA reassumed the programs, there is nothing to retrocede to BIA pursuant to the tribal resolution. As such, nothing turns on the outcome of this appeal. Although Appellant may believe that a decision on the merits of her appeal would provide vindication through a ruling that BIA improperly refused to accept a proper tribal resolution, she has not shown that such a ruling would be anything but advisory in nature. The Board does not issue advisory opinions. *Reeder v. Acting Southern Plains Regional Director*, 55 IBIA 201, 202 (2012). Thus, even had the Board considered Appellant's Response, we would have dismissed the appeal as moot. Accordingly, we find no basis to grant reconsideration.

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 denies the petition for reconsideration.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge