



INTERIOR BOARD OF INDIAN APPEALS

Estate of Virginia Andrews

62 IBIA 6 (11/17/2015)



Upon receipt of the appeal, the Board ordered Appellant to complete service of the notice of appeal on the ALJ and interested parties as required by 43 C.F.R. §§ 4.310(b) and 4.323, and to notify the Board that she had done so. In addition, the Board ordered Appellant to show cause why the Board should not dismiss the appeal for lack of standing.

In order to have a right to appeal to the Board, which is referred to as “standing,” an appellant must have been “adversely affected” by the decision that is being appealed. *See* 43 C.F.R. § 4.320 (Who may appeal a judge’s decision or order?). The doctrine of standing incorporates an element of causation: the adverse effect must be caused “by,” i.e., traceable to, the decision being appealed, and must not be the result of independent action of some third party. *See Preservation of Los Olivos v. Pacific Regional Director*, 58 IBIA 278, 282 n.4, 297 (2014). In addition, the doctrine of standing includes the element of redressability, i.e., that an order from the Board would provide the relief that an appellant seeks. *See id.* at 297. The burden to establish standing rests with an appellant. *Third Legislature of the Cheyenne and Arapaho Tribes v. Acting Southern Plains Regional Director*, 54 IBIA 276, 277 (2012).

In the present case, it was not apparent that the ALJ’s Order Denying Reopening deprived Appellant of an opportunity to have Decedent’s interest in the Allotment purchased by the Nation because it appeared that the Nation, an independent party, had taken no action previously to exercise the purchase option (when provided an opportunity to do so), nor did it appear that the Nation would have done so had the ALJ granted reopening.<sup>4</sup> Therefore, the Board ordered Appellant to show cause why the appeal should not be dismissed for lack of standing.

On October 13, 2015, the Board received a response from Appellant. Appellant explains her concern regarding the fractionation of Indian trust land, including the Allotment, and indicates that she filed the appeal because her priority is to keep the issue from fading away. According to Appellant, “all Native Nations have been ADVERSELY AFFECTED – it is not a single family or bloodline issue.”

While the Board understands Appellant’s concerns regarding fractionation, and her interest in having Decedent’s interests in the Allotment purchased by the Nation, the Board’s role in this matter is limited to reviewing the Order Denying Reopening. And in order for Appellant to show that she has a right to appeal the Order Denying Reopening, she must demonstrate that she—individually and specifically—was adversely affected by the Order Denying Reopening. Appellant has not made that showing here. Instead, it is apparent that the Nation previously did not exercise the option afforded to it to purchase

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<sup>4</sup> The Nation did not appeal the Order Denying Reopening.

Decedent's interests in the Allotment, and there is no evidence it would have done so had the ALJ granted reopening. Thus, the injury complained of by Appellant appears to be traceable to the Nation's action, or in this case inaction, and not the Order Denying Reopening.

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 for failure to demonstrate standing.

I concur:

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Steven K. Linscheid  
Chief Administrative Judge

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//original signed  
Thomas A. Blaser  
Administrative Judge