



INTERIOR BOARD OF INDIAN APPEALS

Ramona Two Shields and Donna Morgan v.
Great Plains Regional Director, Bureau of Indian Affairs

64 IBIA 10 (10/19/2016)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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RAMONA TWO SHIELDS and)	Order Docketing and Dismissing
DONNA MORGAN,)	Appeal
Appellants,)	
)	
v.)	Docket No. IBIA 16-096
)	
GREAT PLAINS REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	October 19, 2016

On August 9, 2016, the Board of Indian Appeals (Board) received a notice of appeal from Ramona Two Shields and Donna Morgan (Appellants), pro se. Appellants seek review of two identical August 4, 2016, decisions (Decisions) of the Great Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA), denying Appellants' challenges to the Secretarial election held on July 22, 2016, to vote on a proposed amendment to the Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation. The Regional Director found that Appellants failed to provide substantiating evidence for their challenges based on alleged procedural errors in the Secretarial election. The Regional Director also notified Appellants that, pursuant to regulations governing Secretarial elections that were revised by the Assistant Secretary – Indian Affairs in 2015, and in effect at the time of the Secretarial election being challenged, his decision denying each challenge was a final agency action for the Department of the Interior (Department).

On receipt of the appeal, the Board ordered Appellant to show cause (that is, explain), why this appeal should not be dismissed for lack of jurisdiction. We now docket this appeal, but must dismiss it because the Board does not have jurisdiction to review decisions that are final for the Department when issued.

The Board's jurisdiction is limited to the authority vested in it by regulation or otherwise delegated to it by the Secretary of the Interior. *See* 43 C.F.R. § 4.1(b)(1). The Regional Director's decisions in the present case were subject to revised Federal regulations, found at 25 C.F.R. Part 81, which establish the procedures for authorizing and conducting Secretarial elections, and became effective November 18, 2015. 80 Fed. Reg. 63094, 63094 (Oct. 19, 2015). Section 81.45 requires that the Authorizing Official, here, the

Regional Director, review the election results and challenges, if any. 25 C.F.R. § 81.45 (2016) (*When are the results of the Secretarial election final?*). The Authorizing Official must notify, in writing, both the governing body of the tribe and the BIA Director, of the decisions on any challenges, the outcome of the voting, whether the proposed governing document or amendment(s) are approved, or, if they are found to be contrary to Federal law, disapproved, and “[t]hat the decision is a final agency action.” *Id.* § 81.45(c)(1)-(4). The regulations also provide that “[t]he Authorizing Official’s decision to approve or disapprove the governing document or amendment is a final agency action.” *Id.* § 81.45(f). The term “final agency action” means that the Authorizing Official’s approval or disapproval action is “final for the Department.” *Id.* § 81.4 (definition of “Final agency action”).

In their response to the Board’s order to show cause (OSC), Appellants address the merits of their challenges to the Secretarial election, but fail to show that the Board has jurisdiction to review the Regional Director’s decisions in this matter under the governing regulations. *See* Appellants’ Response to OSC, Sept. 2, 2016. Instead, Appellants cite to a Board decision concerning the appeal from a regional director’s denial of challenges to a Secretarial election conducted on July 30, 2013. *Id.* at 2 (citing *Charles K. Hudson v. Great Plains Regional Director*, 61 IBIA 253 (2015)). Appellants fail to recognize that the Board’s decision in that case necessarily applied the regulations in effect at the time of the July 2013 Secretarial election and the September 13, 2013, decision which was before the Board on appeal. *See Hudson*, 61 IBIA at 253. As explained by the Regional Director, the revised Part 81 regulations that went into effect on November 18, 2015, governed the July 22, 2016, Secretarial election and the review of Appellants’ challenges. Decisions at 5. The Regional Director correctly advised Appellants that his decision was “a final agency action that [was] not ‘subject to appeal to a superior authority in the Department.’” *Id.* (citing 25 C.F.R. § 2.6). Because the Regional Director’s August 4, 2016, decisions were final for the Department, the Board lacks jurisdiction over this appeal.

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 for lack of jurisdiction.

I concur:

// original signed
Robert E. Hall
Administrative Judge

//original signed
Thomas A. Blaser
Chief Administrative Judge