JOSEPH FRANKLIN COLBY, Appellant	: Order Docketing and Dismissing : Appeal and Remanding Matter to : Osage Agency Superintendent
v.	: :
ACTING EASTERN OKLAHOMA REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	: Docket No. IBIA 00-100-A : : : August 3, 2000

On July 25, 2000, the Board of Indian Appeals received a notice of appeal from Joseph Franklin Colby (Appellant), who seeks review of a June 19, 2000, decision of the Acting Eastern Oklahoma Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director's decision was issued in an appeal from a decision of the Acting Superintendent, Osage Agency, BIA (Superintendent), concerning Appellant's application for trust acquisition of land in Osage County, Oklahoma. Upon concluding that the record submitted by the Superintendent was inadequate to support her decision, the Regional Director vacated the Superintendent's decision and remanded the matter to her for further consideration.

Appellant's notice of appeal shows that he is attempting to appeal the merits of the Superintendent's decision. However, the Regional Director never reached the merits of the Superintendent's decision. The Board's review in this appeal would be limited to the question actually decided by the Regional Director))i.e., whether or not the record submitted by the Superintendent was adequate to support her decision. Given the discretionary nature of BIA decisions concerning trust acquisitions, the Board could not address the merits of the trust acquisition issue until the Regional Director has first addressed them.

The Regional Director correctly provided Appellant with instructions concerning his right to appeal to the Board, and Appellant was clearly entitled to file an appeal with the Board. In the circumstances of this case, however, Appellant can gain nothing by continuing this appeal.

If the Board were to disagree with the Area Director and find that the record submitted by the Superintendent was adequate to support her decision, a logical result would be that the

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Superintendent's decision would stand, an outcome Appellant clearly does not want. More likely, however, the Board would remand the case to the Regional Director for a full consideration on the merits.

If the Board were to agree with the Regional Director, the case would be returned to the Superintendent in accordance with the Regional Director's decision.

It is apparent that retention of this appeal on the Board's docket will result either in a decision adverse to Appellant or a substantial delay in the resolution of the trust acquisition issue. Under these circumstances, the Board finds that this appeal should be dismissed so that the Superintendent may proceed promptly with the reconsideration of Appellant's trust acquisition application. Should Appellant be dissatisfied with the result, he may appeal again.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed and dismissed without prejudice. The matter is remanded to the Superintendent for reconsideration in accordance with the Regional Director's June 19, 2000, decision.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

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