

INTERIOR BOARD OF LAND APPEALS

Frank Robbins and High Island Ranch

v.

Bureau of Land Management

170 IBLA 219 (September 26, 2006)

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FRANK ROBBINS AND HIGH ISLAND RANCH
v.
BUREAU OF LAND MANAGEMENT

IBLA 2006-187

Decided September 26, 2006

Interlocutory appeal from orders of Administrative Law Judge James H. Heffernan denying a motion to dismiss a harassment claim and a request for reconsideration of that denial. WY-01-2000-3.

Orders denying motion to dismiss harassment claim reversed in part; motion for stay of all pending administrative proceedings denied; appeal returned to Judge Heffernan for further proceedings.

1. Administrative Procedure: Hearings--Appeals:
Jurisdiction--Grazing Permits and Licenses: Hearings--Grazing Permits and Licenses: Trespass--Office of Hearings and Appeals--Rules of Practice: Hearings

An Administrative Law Judge has no authority to invalidate an otherwise valid BLM grazing trespass decision based on proof of improper motive on the part of a BLM official or employee involved in the development or issuance of the decision.

2. Administrative Procedure: Hearings--Evidence: Credibility of Witnesses--Rules of Practice: Evidence--Rules of Practice: Hearings

Evidence may be introduced to establish or challenge the credibility of testifying witnesses, but such evidence should be considered only in the context of testimony relevant to the facts at issue in the hearing.

APPEARANCES: John S. Retrum, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management; Karen Budd-Falen, Esq., Cheyenne, Wyoming, for Frank Robbins and High Island Ranch.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

The Worland, Wyoming, Field Office, Bureau of Land Management (BLM), has requested interlocutory review of three issues raised in Administrative Law Judge James H. Heffernan's February 13, 2006, order, denying BLM's motion to dismiss the harassment and constitutional claims raised in Frank Robbins' and High Island Ranch's (referred to collectively as Robbins) appeal of a June 28, 2000, final grazing trespass decision, and in his February 22, 2006, order, denying BLM's request for reconsideration of the February 13 order. Pursuant to 43 CFR 4.28, BLM filed a motion asking Judge Heffernan to certify the three questions for interlocutory appeal. The Judge granted the motion by order dated May 12, 2006, and the Board accepted the interlocutory appeal by order dated June 21, 2006.

As delineated in Judge Heffernan's May 12, 2006, order granting certification, the three issues certified and accepted for interlocutory review are:

1. Whether a presiding Administrative Law Judge (ALJ) in a grazing trespass proceeding enjoys jurisdiction to invalidate a BLM trespass decision based on proof to be presented by the Appellant in a scheduled public hearing that said agency decision was improperly influenced by illegal or ulterior motive by one or more BLM deciding officials.
2. Whether the mental processes by which one or more BLM deciding officials determined to issue a grazing trespass decision may be the subject of an evidentiary presentation by the Appellant at the scheduled public hearing in order to challenge the credibility of said BLM deciding official(s).
3. If the two above-referenced issues are justiciable before an ALJ in a grazing adjudication, whether reasonable limits may be imposed at the hearing with respect to the amount of evidence which the Appellant may proffer regarding the mental processes by which said BLM deciding official(s) determined to issue the trespass decision on appeal in the instant docket.

(May 12, 2006, ALJ order at 2.) These three legal issues are the only issues currently before us.

This particular dispute began on June 14, 2000, when BLM issued a trespass notice to Robbins (WY-010-3960), alleging that he had allowed livestock to graze on public lands in an area or at a time different from that authorized in violation of the Taylor Grazing Act, as amended (TGA), 43 U.S.C. § 315b (2000), the Federal Land Policy and Management Act of 1976, as amended (FLPMA), 43 U.S.C. § 1752

(2000), and 43 CFR 4140.1(b). BLM followed the trespass notice with a proposed decision dated June 28, 2000, which summarized the events leading up to the unauthorized grazing use determination, including BLM employees' observations of 21 of Robbins' cattle along the Cottonwood Creek Road and adjacent to Cotton Creek on intermingled private land within the unauthorized West Pasture^{1/} of the Wagonhound Allotment on June 8, 2000; 121 of Robbins' cattle on public and private land throughout that pasture on June 12, 2000; and 56 of Robbins' cattle on public and private land in the pasture on June 13, 2000. The proposed decision recounted Robbins' statements that his cattle had drifted into the West Pasture when a third party left a gate open, that he had rounded up the cattle by the evening of June 12, and that the cattle had broken through the pasture fence the following day due to lack of feed on the authorized South Pasture of the Allotment. The decision noted that, in a meeting with BLM on June 16, 2000, Robbins had formally requested that his grazing authorization be changed from the South Pasture to the West Pasture and that BLM had granted that request effective that day. The proposed decision determined that the unauthorized grazing use before June 16, 2000, constituted a nonwillful trespass in violation of 43 CFR 4150.1(a) and demanded payment of \$70.20 to settle the unauthorized grazing use.

Rather than protesting the proposed decision, Robbins chose to let the decision become final. He then filed an appeal with the Hearings Division of the Office of Hearings and Appeals in accordance with 43 CFR 4.470. Robbins maintained that not only had BLM failed to show that his cattle were using public lands at the time of the trespass, but also that BLM had a history of treating Robbins differently from other permittees in violation of his equal protection rights by formally charging him with trespass rather than simply calling him and affording him the opportunity to correct the unintentional use before issuing a trespass notice. In essence, Robbins claimed that BLM had engaged in a pattern of harassment by failing to follow its routine procedure of informing an alleged violator of the trespass problem and allowing correction of the problem rather than filing trespass charges; by charging him with trespass for unauthorized grazing use in the West Pasture and then, later that same day, authorizing grazing use of that pasture; and by finding him in trespass after he voluntarily informed BLM that the gate to his authorized pasture was open and that his cattle had escaped to the unauthorized West Pasture.

On May 20, 2003, ALJ Marcel Greenia, then assigned to the case, granted the parties' joint motion to stay the proceedings until January 15, 2005, in accordance with a settlement agreement affecting this and other similar appeals, negotiated by

^{1/} The West Pasture apparently was not authorized for grazing because it was scheduled to be rested, according to the High Island Ranch Allotment Management Plan. See BLM Motion for Summary Dismissal, Ex. 2.

the parties. By order dated September 16, 2005, Judge Heffernan reinstated the proceedings in the instant appeal and set the matter for a hearing.

On December 27, 2005, BLM moved for summary dismissal of the appeal. In addition to asserting that Robbins had failed to controvert the findings that his cattle had used public land, BLM contended that Robbins' claim of a pattern of harassment was unsupported by fact or law and therefore did not establish error in the final grazing trespass decision.

In his Response to BLM's motion for summary dismissal, Robbins provided arguments and evidence challenging BLM's conclusion that the cattle had used public, as opposed to private, land in the West Pasture and denying that he had "allowed" his livestock to graze in the unauthorized pasture. He also insisted that the evidence of harassment was relevant, citing his Federal court action against various Worland Field Office, BLM, employees in their individual capacities for money damages, filed pursuant to the Racketeering and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968 (2000), and Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics (Bivens), 403 U.S. 388 (1971), in which he alleged that adverse decisions, including the one at issue here, had been issued as part of an ongoing pattern of racketeering, extortion, blackmail, and retaliation against him for exercising his constitutional rights. Robbins v. Wilkie, No. 98-CV-201-B (D. Wyo. Jan. 20, 2004) (order denying summary judgment), 2004 U.S. Dist. LEXIS 29180. ^{2/} He asserted that significant evidence and numerous facts indicated that the decision was issued as part of an illegal pattern of harassment, extortion, and punishment against him rather than as a good faith effort to apply BLM regulations, and that evidence of intentional harassment and wrongful motive was pertinent because BLM employees may not issue decisions for illegal reasons. Robbins then moved for summary judgment.

Judge Heffernan denied both BLM's motion for summary dismissal and Robbins' motion for summary judgment by order dated January 12, 2006. In so doing, he found that the appeal raised disputed material facts precluding summary resolution.

On January 26, 2006, BLM moved for a ruling on its argument that Robbins' harassment claim should be dismissed for failure to state a claim upon which relief may be granted. Robbins responded, asserting that evidence of harassment, discrimination, or illegal motive was relevant to demonstrate bias or to impeach or question the veracity of testimony or documentary evidence, and asking that he be

^{2/} In that suit, Robbins alleged that the named BLM employees attempted to extort a right-of-way across Robbins' property in violation of RICO and the Fifth Amendment. See Robbins v. Wilkie, 433 F.3d 755, 759-60 (10th Cir. 2006).

allowed to present his evidence regarding harassment, bias, and prejudice to challenge the credibility of the witnesses testifying against him. ^{3/}

In his February 13, 2006, order, Judge Heffernan denied BLM's motion. He stated that Robbins' submission of probative evidence showing that the allegedly trespassing cattle were actually on private, not public, land had raised the corollary issue of whether BLM had based the June 28, 2000, trespass decision on legally sufficient grounds or had illegally issued the decision for the ulterior motive of coercing Robbins into granting BLM a separate right-of-way, noting that both the U.S. District Court and the U.S. Court of Appeals had found sufficient evidence of harassment to warrant a trial. He explained that he had jurisdiction under the Administrative Procedure Act (APA), 5 U.S.C. §§ 554, 556 (2000), to consider the coercion claim because the issue before him was whether BLM had issued the trespass decision for the illegal motive of forcing Robbins to grant it a right-of-way.

Distinguishing the cases cited by BLM, Judge Heffernan indicated that considerable precedent supported his jurisdiction to review whether BLM's decision was per se illegal because it was issued not to control trespassing cattle, but to coerce unrelated conduct and actions by Robbins, citing *Fallini v. Hodel*, 725 F. Supp. 1113, 1117-18 (D. Nev. 1989), aff'd, 963 F.2d 275 (9th Cir. 1991). Relying on the Federal court determinations that Robbins had made a prima facie showing of harassment by various BLM employees, the Judge concluded that BLM could not lawfully accuse Robbins of trespass in order to obtain a right-of-way. He therefore went beyond Robbins' request that evidence of harassment be allowed to impeach the credibility of the witnesses against him and determined to adjudicate the additional issue of whether the trespass decision was issued for ulterior, unlawful motives to coerce Robbins into granting BLM a right-of-way.

BLM sought reconsideration of Judge Heffernan's February 13, 2006, order, objecting to the Judge's decision to allow Robbins to raise the new right-of-way coercion issue. Judge Heffernan denied the motion for reconsideration by order dated February 22, 2006, incorporating his earlier order. As noted above, Judge Heffernan granted BLM's motion for certification of three questions for interlocutory ruling, and the Board accepted the interlocutory appeal. BLM's certification request

^{3/} Robbins cited various rulings in his Federal court litigation as demonstrating that he had presented ample evidence showing that BLM employees had used threats, lies, harassment, disparate treatment, and the issuance of frivolous trespass decisions, among other things, to force him to give BLM a permanent easement across his private property. He characterized BLM's motion as an attempt to prevent the Office of Hearings and Appeals from hearing his story about how BLM employees had used their power to illegally extort, blackmail, and punish him. See Response to Motion for Ruling on Dismissal of Claim of Harassment at 3-5.

seeks an order from the Board reversing Judge Heffernan's orders holding that the final decision may be legally invalidated by proof of BLM's improper motive in arriving at the decision; directing Judge Heffernan to require on remand a strong prehearing showing of bad faith or improper behavior by a BLM official or employee in developing or issuing the decision before allowing any evidence or inquiry about motive to attack witness credibility; and, if the Judge determines that such a prehearing showing has been made, directing him to place reasonable limits on the submission of evidence of improper motive.

QUESTION ONE

BLM contends that an otherwise valid final grazing decision may not be invalidated solely by proof of improper motive on BLM's part in developing or issuing the decision. BLM asserts that nothing in the TGA, FLPMA, or the implementing regulations specifies that an improper motive on BLM's part in issuing a grazing decision is a ground for legally nullifying the decision. Rather, BLM submits, the relevant considerations in a nonwillful trespass appeal are whether BLM has met its burden of proving grazing trespass by reliable, probative, and substantial evidence when weighed under the preponderance of the evidence standard. BLM points out that 43 CFR 4150.1 specifies that violations of 43 CFR 4140.1(b)(1) constitute unauthorized grazing and that 43 CFR 4140.1(b)(1)(iii) prohibits "[a]llowing livestock or other privately owned or controlled animals to graze on or be driven across [public rangelands] * * * [i]n an area or at a time different from that authorized." BLM maintains that Board precedent clearly holds that the agency's motives in issuing resource decisions are irrelevant to the issues of whether the violations in question occurred and whether a proper basis existed for the decision.

Judge Heffernan's reliance on the APA is misplaced, BLM avers, because nothing in the APA explicitly states that an improper motive in issuing a grazing trespass decision is a ground for legally invalidating the decision. Nor, according to BLM, does the Fallini case cited by the Judge, which addresses the authority of the Federal district courts to set aside an agency decision for improper motive, stand for the proposition that an ALJ has the jurisdiction under the APA, TGA, or FLPMA to hear such claims in an administrative proceeding.

BLM further contends that allowing inquiry into the mental processes by which a BLM official arrived at a decision conflicts with the governmental predecisional and deliberative process privilege, the goals of which are to encourage frank and open discussion within an agency in its formulation of policy, to protect against premature disclosure of proposed policies before they are finally adopted, and to protect against public confusion resulting from disclosures of reasons and rationales not ultimately the grounds for the agency's decision. BLM enumerates additional policy reasons against allowing an ALJ to invalidate an otherwise valid grazing decision upon proof

of improper motive, including that finding that the decision was otherwise valid because a proper basis in law and fact existed for the decision would effectively moot the allegation of improper motive; that invalidating a grazing decision based on improper motive would allow an appellant who committed trespass to escape liability; and that permitting appellants to escape liability upon proof of improper motive on BLM's part would significantly increase the volume of cases pending before the Office of Hearings and Appeals because such averments are not uncommon.

Robbins, on the other hand, maintains that BLM's decision may be invalidated upon a showing of improper, illegal, or criminal motive and intent on the part of agency decision makers. He defends Judge Heffernan's conclusion that a substantial question has been raised as to whether BLM employees issued the decision not as a legitimate trespass decision, but as a part of a pattern of illegal coercion. He contends that both case law and the judicial review provisions of the APA, 5 U.S.C. § 706 (2000), support the Judge's authority to consider whether BLM issued the adverse decision to extort or blackmail Robbins or to punish him for exercising a constitutional right. Robbins avers that the TGA and FLPMA limit BLM to considering only those factors relevant to trespass in issuing a trespass decision and do not allow BLM employees to commit extortion or violate RICO, other Federal statutes, or the Constitution.

Robbins distinguishes a number of Board cases restricting inquiry into the motivations of BLM decision makers, asserting that none of those cases involved allegations of violations of Federal and state civil and criminal statutes in the issuance of the administrative decisions or judicial findings of substantial evidence of actual wrongdoing. He insists that the motive and intent of BLM employees matter when they amount to willful violations of civil, criminal, or constitutional law and that BLM cannot use its regulations to shield itself and its employees from culpability for intentionally illegal or criminal acts. He further argues that the Fallini case establishes principles widely recognized by Federal courts and supported by the judicial review provisions of the APA and must be applied in this case.

Robbins denies that considering the evidence of illegal motive and intent would allow a rancher who is in fact guilty of trespass to escape liability. He submits that, to the contrary, if extraneous motivations significantly influenced the decision, then the decision should be invalidated as arbitrary and capricious and, instead of unjustly escaping liability, the rancher would be shielded from unjustly being held liable. He also discounts BLM's concern that allowing such an inquiry would foster increased litigation by other appellants, asserting that his complaints are unique.^{4/}

^{4/} Robbins has also requested that the Board also stay all his administrative cases pending resolution of the Federal court litigation, which he contends will resolve the

(continued...)

[1] To sustain a charge of nonwillful grazing trespass, BLM must prove unauthorized grazing use by a preponderance of reliable, probative, and substantial evidence. Thoman v. BLM, 152 IBLA 97, 106 (2000); Eason v. BLM, 127 IBLA 259, 263 (1993); BLM v. Ericsson, 88 IBLA 248, 257 (1985). Unauthorized grazing use, as delineated in 43 CFR 4150.1, includes violations of 43 CFR 4140.1(b)(1), which prohibits “[a]llowing livestock or other privately owned or controlled animals to graze on or be driven across [public rangelands] * * * (iii) [i]n an area or at a time different from that authorized.” Robbins denies that his cattle were on public land within the unauthorized pasture and that he allowed the cattle to graze on that pasture. Resolution of Robbins’ appeal of BLM’s final grazing trespass decision, therefore, rests on whether his cattle were grazing on public, as opposed to private, land within the unauthorized pasture and, if so, whether he allowed his cattle to graze on public land without authorization.

BLM’s motive in issuing a trespass decision is irrelevant to whether the violations in question existed, and assertions of harassment, discrimination, and selective enforcement by the agency, even if established, do not excuse violations by the permittee of regulatory requirements or permit terms and conditions. See United States v. Pass Minerals, 168 IBLA 115, 156 n.31 (2006); Delbert D. Jones, 147 IBLA 195, 199 (1999). If the evidence shows that Robbins’ cattle were on public land and that they grazed there without authorization, then the trespass decision must be upheld regardless of BLM’s motive in issuing the decision; if the evidence shows that the cattle were on private land or that they did not graze on public land without

^{4/} (...continued)

issues of illegal motive and intent. This Board does not possess general supervisory authority over constituent agencies within the Department of the Interior, such as the Hearings Division, and is without power to act on any matter unless its jurisdiction has been properly invoked. See Ruth Z. Ainsley, 98 IBLA 306, 308 (1987); Johnson v. OSM, 84 IBLA 169, 171 (1984); see also Defenders of Wildlife, 169 IBLA 117, 127 (2006). Since our jurisdiction is appellate in nature, we have jurisdiction only where a final decision or order has been issued or where a request for interlocutory review has been certified and accepted. See Filippini Ranching Co. v. BLM, 133 IBLA 19, 24 (1995); 43 CFR 4.28. Robbins has not appealed from or sought and received certification for interlocutory review of a specific ALJ decision or order denying a request to stay his administrative appeals. Even if he had done so, any order we might issue would address only that specific order and would not affect any of his other administrative appeals. See Defenders of Wildlife, 169 IBLA at 127. Accordingly, we deny his stay request.

authorization, then the trespass decision must be reversed and a further finding that the decision was issued for an improper motive would be superfluous. ^{5/}

Although Robbins alleges that BLM's issuance of this trespass decision was part of a pattern of activities amounting to willful violations of civil, criminal, or constitutional law, the components of the Office of Hearings and Appeals, including the Hearings Division and this Board, are not courts of general jurisdiction empowered to hear and rule on such allegations or to provide relief for proven violations. See Owen Severance, 163 IBLA 208, 215 (2004); see also Rainer Huck, 168 IBLA 365, 400 (2006) (Board has no authority to consider constitutional challenges); Rivers Edge Trust, 166 IBLA 297, 305 (2005) (Board has no authority to adjudicate violations of constitutional rights or afford any relief therefrom); George H. Ruth, 121 IBLA 31, 36 (1991) (Board has no jurisdiction to grant monetary compensation). Rather, the jurisdiction of the Hearings Division and this Board is limited to authority over matters within the purview of the Department as delegated to them by the Secretary of the Interior in 43 CFR 4.1. Specifically, 43 CFR 4.1(a) empowers the Hearings Division ALJs to conduct hearings in cases required by law to be conducted pursuant to 5 U.S.C. § 554 (2000) and other cases arising under statutes and regulations of the Department, while 43 CFR 4.1(b)(3)(i) authorizes the Board to issue final decisions in appeals rendered by Departmental officials relating to the use and disposition of public lands and their resources. See, e.g., Benton C. Cavin, 166 IBLA 78, 82 (2005); Owen Severance, 163 IBLA at 215; George H. Ruth, *supra*. Given the limited jurisdiction of the Office of Hearings and Appeals, the Federal court cases and judicial review provisions of the APA, 5 U.S.C. § 706 (2000), cited by Robbins in support of his position that an agency decision may be invalidated upon proof of improper motive, are inapposite here.

We conclude that Judge Heffernan has no authority to invalidate an otherwise valid BLM grazing trespass decision based on proof of improper motive on the part of a BLM official or employee involved in the development or issuance of the decision. We therefore reverse his orders denying BLM's motion to dismiss the harassment claim to the extent they were based on his determination that the final grazing decision may be invalidated by proof of BLM's improper motive in arriving at the decision.

^{5/} The fact that the only issue here is whether unauthorized grazing occurred, not whether BLM properly exercised its statutory discretion, distinguishes this appeal from the cases cited by Robbins which address the situation where unlawful factors, including political considerations, improperly influenced an agency's exercise of its statutory discretion, including Fallini and Town of Orangetown v. Ruckelshaus, 579 F. Supp. 15, 20 (S.D.N.Y. 1984).

QUESTIONS TWO AND THREE

BLM asserts that allowing inquiry into the motives and mental processes of BLM officials and employees in the development and issuance of final grazing decisions for the purpose of challenging their credibility should not be allowed in the absence of a strong prehearing showing of improper motive or agency bad faith, citing Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 420 (1971). BLM contends that Robbins' interest in discrediting a Government witness by showing that he or she was biased or had an improper motive must be weighed against the harm that probing the mental processes of the witness will cause to BLM's and the public's interests by discouraging frank and open intra-agency discussions, creating public confusion, increasing challenges to the credibility of Government officials and employees, weakening the governmental predecisional and deliberative process privilege, and hindering law enforcement. BLM avers that the interests of all parties are best protected by adopting the Citizens to Preserve Overton Park v. Volpe standard and allowing inquiry into motives and mental processes of BLM officials only if a strong prehearing showing of bad faith or improper behavior on the part of the official or employee has been made.

BLM denies that Robbins has made the requisite showing here. BLM disputes both the Judge's conclusion that the evidence and maps Robbins presented demonstrated that the cattle were on private rather than public land and the Judge's reliance on the Federal court rulings. BLM notes that the court in Robbins v. Wilkie, No. 98-CV-201-B (D. Wyo. Jan. 20, 2004) (order denying summary judgment), did not resolve any disputed allegation of agency bad faith, but simply determined that the evidence, when viewed in the light most favorable to Robbins, was such that a jury could return a verdict for him. In any event, BLM contends that this ruling has little bearing on this case because the BLM employee who observed most of the trespass at issue is not a defendant in the Federal court litigation and therefore Robbins' claims of individual wrongdoing in that case do not apply to that employee.

BLM also argues that if an inquiry into motive is allowed at the hearing, the ALJ should set reasonable limits on the amount, duration, and degree of such evidence. BLM asserts that Robbins' appeal contests only the fact that his cattle were on public rather than private parcels of land within the unauthorized allotment. BLM points out that just two BLM employees witnessed the grazing trespass at issue here, and that, therefore, the issue of BLM witness credibility as to the factual basis for the trespass decision is quite narrow and does not require a comprehensive presentation of Robbins' entire case in Robbins v. Wilkie for resolution. BLM submits that, if Robbins makes a strong prehearing showing of improper motive on the part of the BLM officials or employees who developed or issued the final decision, a reasonable limitation should be placed on the amount of evidence and questioning exploring the issue.

Robbins responds that evidence of bias and illegal motive is always admissible to impeach the credibility of witnesses and that precluding him from presenting the highly relevant evidence of illegal motive and intent to demonstrate bias and to impeach the credibility of testimonial and documentary evidence would raise serious due process issues. He dismisses the interests that BLM argues weigh against allowing such evidence as ignoring the public and agency interests in exposing BLM employees who lie or abuse their administrative power to violate Federal law.

Even if a strong preliminary showing of bad faith must be made, Robbins avers that he has more than met that test, citing the Federal district court's conclusion in Robbins v. Wilkie, No. 98-CV-201-B (D. Wyo. Jan. 20, 2004) (order denying summary judgment), 2004 U.S. Dist. LEXIS 29180, and that he presented a substantial amount of evidence based upon which a reasonable jury could conclude that BLM had issued this and other decisions as part of a pattern of extortion and unconstitutional retaliation.^{8/} He also contends that the maps he submitted to the ALJ show that the sections of land BLM identified as the loci of the trespassing cattle are his private land, not public land. According to Robbins, this evidence satisfies whatever preliminary burden he may have to show improper motive or agency bad faith.

Robbins objects to this Board imposing any limitation on the evidence admissible at the hearing, noting that 43 CFR 4.474(a) grants the ALJ the authority to regulate the hearing and rule on the relevancy of offered evidence. Although Robbins denies that the appeal is a one issue case, he concedes that this trespass case is relatively simple, involving the issues of whether the cattle were on private versus public land and whether he allowed his cattle to graze on BLM land without authorization. He maintains, however, that this appeal must not be considered in a vacuum, but must be examined as part of the extensive and complex pattern of illegal activity engaged in by BLM employees designed to extort, blackmail, and punish him.

[2] Departmental ALJs often confront issues with the credibility of witnesses, and this Board has acknowledged that “[w]itnesses are on occasion affected by bias, partisanship, overzealousness, and other constraints.” BLM v. Ericsson, 88 IBLA at 259. Thus, while Robbins may pursue such matters at the hearing, they are relevant only with respect to the “proper weight [accorded] to the fact findings of a hearing examiner where they depend primarily on the credibility of the witnesses * * *.” Id. More important, of course, is whether a witness’ testimony is

^{8/} The District Court found that summary judgment was not appropriate because a factual question existed, but stated that “this Court cannot anticipate that a Wyoming jury would ever award damages to Plaintiff against the Defendant hard-working, faithful employees of BLM.” Id. at * 30.

“inherently incredible []or inconsistent,” *id.* at 258, or “evasive and nonresponsive on major points.” Tetlin Native Corp., 93 IBLA 369, 380 (1986).

In this case, Judge Heffernan may exercise his authority under 43 CFR 4.474 to rule on the relevance of evidence introduced to establish or challenge the credibility of testifying witnesses. But, such evidence must be considered only in the context of testimony addressing whether or not Robbins’ cattle were grazing on public, as opposed to private, land within the unauthorized pasture at issue in the instant appeal. Robbins may not, however, litigate the issues he has raised in his Federal court action.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Heffernan’s February 13 and 22, 2006, orders are reversed to the extent they denied BLM’s motion to dismiss the harassment claim, Robbins’ motion to stay all his administrative appeals currently pending before the Hearings Division is denied, and the matter is returned to Judge Heffernan for further proceedings consistent with this opinion.

H. Barry Holt
Chief Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge