



INTERIOR BOARD OF INDIAN APPEALS

Mary Paul Nathaniel v. Juneau Area Director, Bureau of Indian Affairs

17 IBIA 167 (07/06/1989)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

MARY PAUL NATHANIEL,  
Appellant

v.

JUNEAU AREA DIRECTOR,  
BUREAU OF INDIAN AFFAIRS,  
Appellee

: Order Dismissing Appeal  
:  
:  
:  
: Docket No. IBIA 89-59-A  
:  
:  
: July 5, 1989

This appeal was pending before the Washington, D.C., office of the Bureau of Indian Affairs (BIA) on March 13, 1989, the date new appeals regulations for BIA and the Board of Indian Appeals took effect. See 54 FR 6478 and 6483 (Feb. 10, 1989). On May 16, 1989, the appeal was transmitted to the Board for consideration in accordance with the new procedures.

Appellant Mary Paul Nathaniel, through counsel, Michael Walleri, Esq., Fairbanks, Alaska, seeks review of an August 10, 1988, letter of the Juneau Area Director, BIA, notifying appellant of her right to appeal his retroactive approval of a HUD lease of appellant's lot in Fort Yukon (Lot 4, Block 17, U.S. Survey 2760 A and B, Fort Yukon Townsite).

The partial administrative record transmitted to the Board indicated that appellant's appeal was untimely. However, because of the length of time the appeal had been pending before BIA, without any apparent communication with appellant, the Board determined it would be inappropriate to dismiss the appeal without offering appellant an opportunity to show cause why her appeal should not be dismissed. Accordingly, on May 22, 1989, the Board issued an order to show cause. Appellant's response was received on June 30, 1989.

Under the regulations in effect at the time, appellant's notice of appeal was required to have been received in the Area Director's office within 30 days after the decision was received by appellant. 25 CFR 2.10(a) (1988). Appellant received the Area Director's August 10, 1988, letter on August 15, 1988, but her notice of appeal was not received in the Area Director's office until September 16, 1988, two days after expiration of the 30 day appeal period.

Appellant states that her notice of appeal was mailed on September 8, 1988, from Fairbanks, and that it was extremely unusual for mail to take eight days to get from Fairbanks to Juneau. Appellant reasonably expected, she argues, that a notice of appeal mailed on September 8 would reach the Area Office within the 30 day period. She therefore seeks reinstatement of her appeal on grounds of unusual delays in the postal system.

The affidavit of mailing for appellant's notice of appeal states that the notice was mailed on September 8, 1988. However, the envelope shows that it was postmarked at Fairbanks on September 14, 1988. The envelope is also stamped "Returned for postage." This is the apparent reason for the discrepancy in the affidavit and postmark dates and for the seemingly long time in transit.

25 CFR 2.10(b) (1988) provided, "No extension of time will be granted for filing of the notice of appeal. Notices of appeal which are not timely filed will not be considered, and the case will be closed." The Board has held that it must dismiss an appeal which was untimely under 25 CFR Part 2. E.g., Henderson v. Portland Area Director, 16 IBIA 169, 175 (1988); Tanana Chiefs' Conference v. Juneau Area Director, 14 IBIA 87, 89-90 (1986). Assuming without deciding that a delay clearly the fault of the Postal Service could excuse the late filing of a notice of appeal, this is not such a case.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Juneau Area Director's August 10, 1988, letter is dismissed.

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//original signed  
Anita Vogt  
Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge