



INTERIOR BOARD OF INDIAN APPEALS

Thomas A. (Tom) Dailey v. Acting Billings Area Director, Bureau of Indian Affairs

19 IBIA 271A (03/21/1991)

Related Board cases:

22 IBIA 205

26 IBIA 17

34 IBIA 128



United States Department of the Interior

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

TOM DAILEY,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 91-54-A
ACTING BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 21, 1991

On March 19, 1991, the Board of Indian Appeals received a notice of appeal from Tom Dailey, through counsel, Martin J. Elison, Esq., Hardin, Montana. Appellant seeks review of a February 11, 1991, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning cancellation of leases 0-7547, 0-7548, and 0-7549 on the Crow Indian Reservation. Appellant's counsel, to whom the Area Director's decision was addressed, states that he received it on February 12, 1991.

The Area Director's decision concludes:

This decision may be appealed to the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Indian Appeals (IBIA), 4015 Wilson Boulevard, Arlington, Virginia 22203, pursuant to 25 CFR Part 2 (revised March 1989), which is enclosed. Your notice of appeal must be filed in this office within 30 days of the date you receive this decision. This date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to this office. * * * No extension of time may be granted for filing notice of appeal.

The Area Director incorrectly advised appellant that his notice of appeal should be filed in the Area Office. Under the Board's regulations, notices of appeal are to be filed with the Board. 43 CFR 4.332(a). The Board will, however, accept an appeal filed in the wrong office if the error is the result of incorrect information given in the BIA decision.

In this case, appellant sent copies of his notice of appeal to both the Area Director and the Board. Both copies were postmarked March 15, 1991. 43 CFR 4.332(a) requires that a notice of appeal be filed "within 30 days after receipt by the appellant of the decision from which the appeal is taken" and further provides that "[a] notice of appeal not timely filed shall be dismissed for lack

of jurisdiction.” 43 CFR 4.334 provides that extensions of time may be granted “except for the time fixed for filing a notice of appeal which, as specified in §4.332 of this part, may not be extended.” The Area Director correctly informed appellant of the requirement for timely filing of notices of appeal. Neither the notice of appeal sent to the Area Director nor the notice of appeal sent to the Board was timely.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge