



INTERIOR BOARD OF INDIAN APPEALS

Georgia Gallegos v. Anadarko Area Director, Bureau of Indian Affairs

20 IBIA 36 (05/15/1991)



United States Department of the Interior

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

GEORGIA GALLEGOS,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 91-84-A
ANADARKO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	May 15, 1991

On May 14, 1991, the Board of Indian Appeals (Board) received a copy of a notice of appeal that was transmitted to it by the Anadarko Area Director, Bureau of Indian Affairs (Area Director). The notice had been filed by Georgia Gallegos, Chairman of the Delaware Tribal Election Committee (appellant), through counsel, Hans Walker, Jr., Esq., Washington, D.C., and was addressed to the Secretary of the Interior. Appellant sought review of an April 1, 1991, decision issued by the Area Director concerning a decision issued by the Anadarko Area Court of Indian Offenses Appellate Court. The court is a "CFR court," operating under authority of 25 CFR Part 11.

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that the appeal be dismissed with prejudice.

The Area Director's decision concludes:

This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia, 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. * * * You must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs, * * * (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties. * * *

If no appeal is timely filed, this decision will become final for the Department of the interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Appellant has failed to file a timely notice of appeal. The Area Director's decision clearly informed appellant that its notice of appeal was to be filed with the Board, and that copies were to be sent to the Assistant Secretary, the Anadarko Area Office, and interested parties. Appellant, however, chose to file its appeal with the Secretary, without sending even a copy of the notice to the Board. The Board has consistently held that a notice of appeal is not timely when the appellant is given the proper appeal information, but files its notice of appeal with an official other than the Board. The filing of a timely notice of appeal in the office designated in the regulations is jurisdictional. 43 CFR 4.332(a); Thompson v. Muskogee Area Director, 20 IBIA 34 (1991); Iowa Tribe of Oklahoma v. Acting Anadarko Area Director, 20 IBIA 27 (1991); Smith v. Muskogee Area Director, 20 IBIA 1 (1991); Maynard v. Acting Assistant Aberdeen Area Director, Indian Programs, 19 IBIA 273 (1991). The Department is bound by its own properly promulgated regulations, which have the force and effect of law. Kiowa Business Committee of the Kiowa Indian Tribe v. Acting Anadarko Area Director, 18 IBIA 401 (1990); Tarabochia v. Deputy Assistant Secretary - Indian Affairs (Operations), 12 IBIA 269, 91 I.D. 243 (1984).

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 Anadarko Area Director's April 1, 1991, decision is dismissed with prejudice as not being timely filed.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge