



## INTERIOR BOARD OF INDIAN APPEALS

Jack and Shirley Baker v. Muskogee Area Director, Bureau of Indian Affairs

20 IBIA 164 (08/07/1991)

Reconsideration denied:

20 IBIA 237

Related Board cases:

19 IBIA 164

39 IBIA 267



# United States Department of the Interior

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

JACK AND SHIRLEY BAKER,	:	Order Docketing and Dismissing
Appellants	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 91-109-A
ACTING MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 7, 1991

On July 18, 1991, the Board of Indian Appeals received a notice of appeal by referral from the Office of the Solicitor, Department of the Interior, Washington, D.C. The notice of appeal is from Jack and Shirley Baker and indicates that appellants are attempting to challenge a June 5, 1991, decision of the Acting Muskogee Area Director, Bureau of Indian Affairs. The Acting Area Director's decision, which denied appellants' application for the trust acquisition of land, was issued following the Board's remand in Baker v. Muskogee Area Director, 19 IBIA 164, 98 I.D. 5 (1991). Appellants received the June 5 decision on June 6, 1991.

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.

The Acting Area Director's decision concluded:

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 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. [Emphasis in original.]

Appellants have failed to file a timely notice of appeal. The Acting Area Director's decision clearly informed them that their notice of appeal was to be filed with the Board and provided the Board's address. Appellants chose, how-

ever, to file their notice of appeal with the Office of the Solicitor. The Board has consistently held that a notice of appeal is not timely when the appellant has been given the correct appeal information but files his/her notice of appeal with an official other than the Board, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations. E.g., Iowa Tribe v. Acting Anadarko Area Director, 20 IBIA 27 (1991); Maynard v. Acting Assistant Aberdeen Area Director, 19 IBIA 273 (1991); Kiowa Business Committee v. Acting Anadarko Area Director, 18 IBIA 384, recon. denied, 18 IBIA 401 (1990); McLean v. Portland Area Director, 18 IBIA 311 (1990); Jones v. Assistant Anadarko Area Director, 17 IBIA 122 (1989).

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 as not being timely filed. The Acting Muskogee Area Director's June 5, 1991, decision is final for the Department of the Interior.

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//original signed

Anita Vogt  
Administrative Judge

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge