



INTERIOR BOARD OF INDIAN APPEALS

Sam Netterville v. Aberdeen Area Director, Bureau of Indian Affairs

24 IBIA 52 (06/07/1993)

Reconsideration denied:
24 IBIA 80



United States Department of the Interior

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

SAM NETTERVILLE, Appellant	:	Order Docketing and Dismissing Appeal
v.	:	Docket No. IBIA 93-90-A
ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	June 7, 1993

On June 1, 1993, the Board of Indian Appeals received a notice of appeal from Sam Netterville (appellant), through counsel, Randolph J. Seiler, Esq., Mobridge, South Dakota. Appellant sought review of a February 4, 1993, decision issued by the Aberdeen Area Director, Bureau of Indian Affairs, concerning appellant's application for an Indian Business Development grant in the amount of \$57,000 in conjunction with an agricultural loan from the Bank of Hoven, South Dakota. The Board received a copy of the return receipt card for this decision from the Area Director. The card, which is not completely clear, shows that appellant received the decision on either February 5 or 15, 1993.

Although the notice of appeal is dated March 3, 1993, the letter transmitting the notice to the Board is dated and postmarked May 27, 1993. The transmittal letter states: "Enclosed please find NOTICE OF APPEAL which was previously served on March 3, 1993 on the following individuals as indicated on the Certificate of Service." The letter then indicates that the notice of appeal was served on the Assistant Secretary - Indian Affairs, the Aberdeen Area Director, the Standing Rock Agency Superintendent, and an official of the Bank of Hoven.

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 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 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 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.

(Emphasis in original).

The Area Director's decision clearly informed appellant that his notice of appeal was to be filed with the Board, and provided the Board's address. Appellant, however, failed to follow the instructions given to him both in the Area Director's decision and in the regulations to which he was referred (see 43 CFR 4.332(a)), and thus failed to file a timely notice of appeal.

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.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge