



INTERIOR BOARD OF INDIAN APPEALS

Philip W. Kozak, Jr. v. Acting Aberdeen Area Director,  
Bureau of Indian Affairs

24 IBIA 207 (09/21/1993)

Reconsideration denied:  
24 IBIA 242



# United States Department of the Interior

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

PHILIP W. KOZAK, JR.,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 93-127-A
ACTING ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	September 21, 1993

On September 19, 1993, the Office of Economic Development, Bureau of Indian Affairs, transmitted to the Board of Indian Appeals (Board) a notice of appeal that had been filed with the Assistant Secretary - Indian Affairs by Philip W. Kozak, Jr. (appellant). Although the notice of appeal did not identify the official whose decision was being appealed or the subject of the appeal, the Board was able to determine that appellant sought review of a July 14, 1993, decision of the Acting Aberdeen Area Director, denying his application for a U.S. Direct Loan in the amount of \$387,025. The July 14 decision indicates that it was a reconsideration of the Area Director's initial denial decision of July 2, 1993. The Board requested a copy of the July 14, 1993, decision from the Area Director.

The Area Director's decision stated:

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 \* \* \*. 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.

(Emphasis in original).

Appellant has failed to file a timely notice of appeal. The Area Director's decision clearly informed him that the notice of appeal was to be filed with the Board, and provided the Board's proper mailing address. Appellant chose, however, to file his notice of appeal with the Assistant

Secretary. 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 period specified in the regulations. E.g., Small v. Acting Billings Area Director 23 IBIA 112 (1992) ; Butler v. Acting Portland Area Director, 22 IBIA 186 (1992).

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 Acting Aberdeen Area Director's July 14, 1993, decision is dismissed.

\_\_\_\_\_  
//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

\_\_\_\_\_  
//original signed  
Anita Vogt  
Administrative Judge