



INTERIOR BOARD OF INDIAN APPEALS

Hominy Indian Village Committee v. Muskogee Area Director, Bureau of Indian Affairs

25 IBIA 271 (04/19/1994)



United States Department of the Interior

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

HOMINY INDIAN VILLAGE	:	Order Docketing and Dismissing
COMMITTEE,	:	Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 94-79-A
MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	April 19, 1994

On March 14, 1994, the Board of Indian Appeals (Board) received a copy of a notice of appeal from the Hominy Indian Village Committee (appellant). Appellant sought review of an August 30, 1993, decision issued by the Muskogee Area Director, Bureau of Indian Affairs (BIA), directing the Committee Chair to stop bingo operations at the Hominy Indian Village and to release financial records for review and investigation. 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 mailed within 30 days of the date you receive this decision. * * * If you file a notice of appeal, the Board of Indian Appeals will notify you of further appeal procedures

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.

The Board first became aware that appellant had attempted to file an appeal when the Muskogee Area Office telephoned it to inquire about the status of the appeal. Subsequently, the Area Office provided the Board with a copy of the notice. The copy showed that the notice of appeal was addressed to the Board at its correct address. 1/

43 CFR 4.332(a) states that a notice of appeal from the decision of a BIA Area Director must be filed with the Board, and that an untimely notice of appeal must be dismissed. This information was also provided to appellant in the Area Director's decision.

1/ Although appellant was informed by the Area Director that the Board would notify it about further procedures, appellant did not inquire about its appeal although more than five months had passed without any response from the Board.

By order dated March 15, 1994, appellant was given an opportunity to show cause why its appeal should not be dismissed. Appellant's response was received on April 15, 1994. The response states only that the notice of appeal was properly handled in appellant's counsel's office and was either lost in the mail or mishandled by the Department of the Interior.

Appellant has failed to show that its notice of appeal was timely filed. Heuston v. Muskogee Area Director, 21 IBIA 240 (1992); Northcutt v. Muskogee Area Director, 21 IBIA 232 (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 Muskogee Area Director's August 30, 1993, decision is docketed and dismissed.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge