



INTERIOR BOARD OF INDIAN APPEALS

Jerry Matt v. Acting Billings Area Director, Bureau of Indian Affairs

28 IBIA 108 (07/11/1995)



United States Department of the Interior

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

JERRY MATT,
Appellant

v.

ACTING BILLINGS AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Docketing and Dismissing
: Appeal
:
:
: Docket No. IBIA 95-130-A
:
:
: July 11, 1995

On July 10, 1995, the Board of Indian Appeals received a notice of appeal from Jerry Matt, pro se. Appellant seeks review of a May 12, 1995, decision issued by the Acting Billings Area Director, Bureau of Indian Affairs (Area Director), concerning the allocation of grazing units on the Blackfeet Reservation.

Appellant states that he received the Area Director's decision on May 16, 1995, and that he mistakenly filed a notice of appeal with the Assistant Secretary - Indian Affairs. His notice of appeal to the Board, postmarked July 6, 1995, requests an extension of time for filing the notice.

The Board's regulations provide, at 43 CFR 4.332(a): "A notice of appeal not timely filed shall be dismissed for lack of jurisdiction." In addition, 43 CFR 4.334, concerning extensions of time, provides that "the time fixed for filing a notice of appeal * * * may not be extended."

The Area Director's May 12, 1995, 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 * * * (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. [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. The decision also informed appellant that he could not be granted an extension of time for filing his notice of appeal.

Appellant did not follow the Area Director's instructions but, instead, filed a notice of appeal with the Assistant Secretary - Indian Affairs. The Board has consistently held that a notice of appeal is not timely when the appellant has been given 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., Kozak v. Acting Aberdeen Area Director, 24 IBIA 207 (1993); 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 is docketed but is dismissed as not being timely filed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge