



INTERIOR BOARD OF INDIAN APPEALS

Elmer Capoeman v. Portland Area Director, Bureau of Indian Affairs

30 IBIA 226 (03/05/1997)

Reconsideration denied:

30 IBIA 234



United States Department of the Interior

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

ELMER CAPOEMAN,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 97-99-A
PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 5, 1997

Appellant Elmer Capoeman seeks review of a decision of the Portland Area Director, Bureau of Indian Affairs (Area Director), approving a hold placed on appellant's Individual Indian Money account to recoup \$1,448.04 which was erroneously paid into that account. With his notice of appeal, appellant submitted the first and third (last) pages of the original decision sent to him by the Area Director. Pursuant to its request, the Board received a complete copy of the decision from the Area Director on March 4, 1997.

The original decision was undated. The copy which the Area Director submitted to the Board indicates that it was sent on January 21, 1997. The Area Director also submitted a copy of the return receipt card, which shows that appellant received the decision on January 25, 1997.

The Area Director's decision contains the following information:

VI. NOTICE OF RIGHT TO FURTHER APPEAL

This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, in accordance with 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 * * *, 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 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 Interior Department at the expiration of the appeal period. No extension of time may be granted for filing a Notice of Appeal. [Emphasis in original.]

Under 43 CFR 4.332(a), "[a] notice of appeal not timely filed shall be dismissed for lack of jurisdiction." The Area Director gave appellant the correct appeal information, including notifying him of the 30-day deadline for filing a notice of appeal. The Area Director also informed appellant that no extension of time could be granted for filing a notice of appeal.

In order for it to be timely, appellant's notice of appeal needed to be postmarked on or before February 24, 1997. The notice is postmarked February 28, 1997. Appellant has 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 from the Portland Area Director's decision is docketed and dismissed.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge