



INTERIOR BOARD OF INDIAN APPEALS

Lorraine Charlie v. Navajo Area Director, Bureau of Indian Affairs

31 IBIA 35 (06/03/1997)

Denying reconsideration of:  
30 IBIA 302



## United States Department of the Interior

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

LORRAINE CHARLIE,	:	Order Denying Petition for
Appellant	:	Reconsideration
	:	
v.	:	
	:	Docket No. IBIA 97-119-A
NAVAJO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 3, 1997

This appeal was dismissed as untimely on April 29, 1997. 30 IBIA 302. On May 27, 1997, the Board received a filing from Appellant entitled "Request to Vacate Dismissal and Restore Appeal to Docket." The Board treats this filing as a petition for reconsideration under 43 CFR 4.315.

Appellant does not deny that she filed her notice of appeal with the Assistant Secretary - Indian Affairs, rather than the Board. Nor does she deny that the notice was untimely by the time it reached the Board. She contends, however, that she should be excused for not filing a timely notice of appeal with the Board because: (1) the appeal instructions in the Area Director's decision were not clear and, being pressed for time, she failed to interpret them correctly; (2) no one was prejudiced by the delay in the arrival of the appeal at the Board; (3) receipt of the notice of appeal in the Washington, D.C., office of the Bureau of Indian Affairs should be the equivalent of receipt by the Board; and (4) she should be given some latitude because she is a pro se appellant.

None of these contentions is persuasive. The Board finds, with respect to Appellant's contentions: (1) the appeal instructions in the Area Director's decision were clear and correct; (2) even if, as Appellant alleges, no one would be prejudiced by the Board's acceptance of this untimely appeal, it would not matter. <sup>1/</sup> The filing of a timely notice of appeal is jurisdictional. Therefore, the Board lacks jurisdiction over an untimely appeal. 43 CFR 4.332(a); (3) the Board is not a part of the Office of the Assistant Secretary - Indian Affairs or the Bureau of Indian Affairs. Rather, it is entirely independent of those entities. The Board has held many times that the filing of a notice of appeal with the Assistant Secretary is not equivalent to filing a notice with the Board. E.g., Simon v. Sacramento Area Director, 29 IBIA 59 (1996); and (4) pro se appellants, as well as those represented by counsel, are required to file

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<sup>1/</sup> The Board declines to assume that no party would be prejudiced.

timely appeals, in accordance with correct appeal instructions. E.g., After Buffalo v. Acting Billings Area Director, 28 IBIA 131, recon. denied, 28 IBIA 159 (1995).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this petition for reconsideration is denied.

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Anita Vogt  
Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge