



INTERIOR BOARD OF INDIAN APPEALS

Jefferey Alan-Wilson, Sr. v. Sacramento Area Director, Bureau of Indian Affairs

32 IBIA 92 (03/12/1998)

Denying reconsideration of:

32 IBIA 33

Related Board cases:

30 IBIA 241

Reconsideration denied, 31 IBIA 4

30 IBIA 263

Reconsideration denied, 31 IBIA 6

33 IBIA 55



United States Department of the Interior

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

JEFFEREY ALAN-WILSON,	:	Order Denying Reconsideration
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 98-53-A
ACTING SACRAMENTO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 12, 1998

On February 2, 1998, the Board of Indian Appeals dismissed this appeal as untimely. 32 IBIA 33. After it issued its order of dismissal, the Board received two motions to dismiss the appeal, one from the June 1 Council of the Cloverdale Rancheria and the other from the Area Director. Both argued that the appeal was untimely. Because the appeal had already been dismissed, the Board considered the motions moot.

On February 10, 1998, the Board received a letter from Maureen Wilson, opposing the motions to dismiss. Ms. Wilson's letter, dated February 5, 1998, attached a copy of an undated letter signed by Appellant, also opposing the motions to dismiss. The copy of Appellant's letter indicated that the original letter had been, or would be, sent to the Board by certified mail. In view of the possibility that Appellant intended to file the original of his undated letter and/or a true petition for reconsideration of the February 2, 1998, order, the Board awaited the expiration of the 30-day period for filing such petitions in order to give Appellant an opportunity to file something further. However, nothing further has been received.

Accordingly, the Board must now determine whether Ms. Wilson's letter and/or the copy of Appellant's undated letter should be treated as a petition or petitions for reconsideration of the February 2, 1998, order. There are a number of problems in this regard. For one thing, there is no indication that Ms. Wilson served her letter, or the attachments thereto, on the other parties. 1/ For another, it is questionable whether Ms. Wilson, who is not an appellant here, has standing to file a petition for reconsideration. Finally, because the original of Appellant's letter has never been received by the Board, it is not clear that Appellant actually intended to file the letter.

1/ It is conceivable that Ms. Wilson served the parties and simply neglected to include a certificate of service in her filing with the Board. However, the Board has received no responses to her filing from any of the other parties. Given the prompt response of the parties to Appellant's notice of appeal, it seems likely that the parties would have responded to Ms. Wilson's filing, had they received it.

Giving Appellant the benefit of all these doubts, the Board undertakes to consider Ms. Wilson's letter and the copy of Appellant's letter as a petition for reconsideration made by Appellant. Under other circumstances, the Board would require that Appellant serve this filing on the other parties and would give the other parties an opportunity to respond. However, because Appellant cannot prevail here in any case, the Board concludes that such a step is unnecessary.

Ms. Wilson and Appellant make different arguments. Ms. Wilson contends that Appellant initially filed a notice of appeal with the Area Director in accordance with 25 C.F.R. Part 2 and was not aware that the appeal should be filed with the Board until so informed by his attorney, whereupon he prepared his January 27, 1998, notice of appeal (the notice found untimely in the February 2, 1998, order) and sent it to the Board. Ms. Wilson attaches a copy of a notice of appeal signed by Appellant, dated January 26, 1998, and addressed to the Area Director. She also attaches a Postal Service receipt showing that something, presumably the January 26, 1998, notice of appeal, was mailed to the Area Director by Express Mail on January 26, 1998. ^{2/} This notice of appeal, although listing copies sent to various parties, does not show that a copy was sent to the Board. The Board did not receive a copy of the January 26, 1998, notice of appeal until it received the copy attached to Ms. Wilson's filing.

Had this notice of appeal been sent to the Board on January 26, 1998, it would have been timely. However, Ms. Wilson presents no evidence that it was sent to the Board on January 26, 1998. Indeed, she appears to concede that it was not. The Area Director's decision correctly advised Appellant that his notice of appeal was to be filed with the Board. The Board has consistently held that a notice of appeal is not timely when the appellant has been given correct appeal instructions but, in disregard of those instructions, files his 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., Charlie v. Navajo Area Director, 30 IBIA 302, recon. denied, 31 IBIA 35 (1997). Appellant's January 26, 1998, notice of appeal was not received by the Board within the time period specified in the regulations. Accordingly, that notice of appeal is untimely.

Appellant makes no mention of his January 26, 1998, notice of appeal. Instead, he contends that, even though he filed his notice of appeal pro se, his time for filing the notice should run from the date his then attorney received his copy of the decision, rather than from the date on which Appellant received his copy. Appellant states that his attorney received the decision on December 30, 1997. He submits a copy of a declaration from the attorney ^{3/} in support of his statement.

^{2/} For purposes of this order, the Board assumes that it was the notice of appeal which was mailed to the Area Director on Jan. 26, 1998.

^{3/} This document, like Appellant's undated notice of appeal, has been received by the Board only in the form of a copy attached to Ms. Wilson's letter.

The attorney's declaration states that, based upon the date he received his copy of the Area Director's decision, he calculated that the final date for filing a notice of appeal was January 29, 1998. He states that other members of his law firm advised Appellant of that date. He further states that he was unaware that Appellant had received his own copy of the decision.

It appears from this declaration that Appellant failed to advise either his attorney or the others in the law firm with whom Appellant spoke that Appellant had received a copy of the Area Director's decision on December 27, 1997. Thus, it appears that the attorney was unable to take this fact into account when calculating the final date for filing a notice of appeal.

Even if Appellant were not partly responsible for his attorney's miscalculation of the critical date, it would not matter. ^{4/} An appellant who has been provided correct appeal instructions in an Area Director's decision is responsible for following those instructions, even where he or she has received incorrect advice from another source. In Stovall v. Billings Area Director, 31 IBIA 41 (1997), the appellant alleged that he had followed incorrect appeal instructions provided to him by a BIA employee. The Board assumed the accuracy of the appellant's factual allegation but found that he was nevertheless responsible for following the correct appeal instructions which had been provided to him in the Area Director's decision. If an appellant is not relieved of his responsibility to file a timely appeal by incorrect appeal information provided by a BIA employee, neither can an appellant be relieved of that responsibility by incorrect information provided by his attorney.

Because Appellant filed his notice of appeal pro se, the date on which his attorney received the decision is irrelevant. Cf. San Diego County Board of Supervisors v. Sacramento Area Director, 28 IBIA 278 (1995) (Although an appeal was alleged to have been filed in response to the copy of the Area Director's decision received by one county official, and would have been timely if filed by that official, the appeal was untimely because it was filed by a different official who had received the decision on an earlier date.)

Appellant had the Area Director's decision before him. That decision informed him that, if he wished to file an appeal, he must do so within 30 days of the date he received the decision. Pro se appellants, as well as those represented by counsel, are required to file their notices of appeal in accordance with correct appeal instructions provided in an Area Director's decision. Charlie, 31 IBIA at 35-36. Appellant bore that responsibility in this case.

^{4/} The attorney blames BIA for not informing him that the decision letter had been sent to Appellant. BIA sent separate, but identical, letters to Appellant and the attorney. The letters did not inform either recipient that the other had been sent an identical letter. While it probably would have been better for BIA to have shown on the letters that the other recipient had been sent the same letter, BIA cannot be blamed for the fact that Appellant did not tell his attorney that he had received the decision letter.

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

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge