



INTERIOR BOARD OF INDIAN APPEALS

Monte and Anna Vance v. Superintendent, Colville Agency,
Bureau of Indian Affairs

34 IBIA 145 (10/21/1999)

Related Board case:
33 IBIA 86



United States Department of the Interior

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

MONTE and ANNA VANCE, Appellants	:	Order Docketing and Dismissing Appeal
	:	
	:	
v.	:	
	:	Docket No. IBIA 00-5-A
PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	
	:	
	:	October 21, 1999

On October 4, 1999, the Board of Indian Appeals (Board) received an administrative record from the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA). The record concerned the right of Appellants Monte and Anna Vance to use an access road across certain allotted land on the Colville Indian Reservation. The Area Director's transmittal memorandum stated that the record was being sent "[i]n anticipation of" receipt of a request for the record from the Board.

Because it had not received a notice of appeal from Appellants, the Board contacted the Portland Area Office for further information. On October 4, 1999, the Area Office faxed to the Board a copy of a September 14, 1999, Notice of Appeal and Statement of Reasons which had been received from counsel for Appellants. Nothing in the Notice of Appeal indicated that the appeal had been filed with the Board.

By order of October 6, 1999, the Board gave Appellants an opportunity to show cause why this appeal should not be dismissed as untimely. The Board received their response on October 18, 1999.

The Area Director's August 12, 1999, decision states at page 4:

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 C.F.R. 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, 4140 MIB, U.S. Department of the Interior, 18th and C Streets, NW, Washington, D.C. 20240, (2) each interested party know to you, and (3) this office. * * *

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.

Appellants contend: "In accordance with [these instructions], the appeal was sent to exactly the entities specified being (1) the Assistant Secretary * * * (2) each interested party * * * and (3) * * * the Portland Area Director. It now appears that an additional Notice of Appeal needed to be sent to the Board." Response at 2-3. They argue that they were misled by incorrect information provided by the Area Director and that their time for filing an appeal should therefore be extended under 25 C.F.R. § 2.7(c).

The Board does not accept this argument. The Area Director's decision clearly notified Appellants that their notice of appeal was to be sent to the Board, with copies to two BIA officials and the interested parties.

The Board has consistently held that a notice of appeal is not timely when an appellant is given correct appeal instructions but fails to follow them, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations. See, e.g., Quileute Indian Tribe v. Portland Area Director, 34 IBIA 98 (1999); Charlie v. Navajo Area Director, 30 IBIA 302, recon. denied, 31 IBIA 35 (1997). Appellants have 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 C.F.R. § 4.1, this appeal from the Area Director's August 12, 1999, decision is docketed but dismissed as untimely.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge