



INTERIOR BOARD OF INDIAN APPEALS

Margie Burkhart v. Eastern Oklahoma Regional Director, Bureau of Indian Affairs

38 IBIA 261 (12/31/2002)

Related Board Case:

48 IBIA 155



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

MARGIE BURKHART,
Appellant

v.

EASTERN OKLAHOMA REGIONAL
DIRECTOR, BUREAU OF INDIAN
AFFAIRS,
Appellee

: Order Docketing and Dismissing
: Appeal
:
: Docket No. IBIA 03-43-A
:
:
: December 31, 2002

On December 24, 2002, the Board of Indian Appeals received a filing titled “Application for Extension of Time for Notice of Appeal” from Margie Burkhardt (Appellant), who seeks to appeal from an October 28, 2002, decision issued by the Eastern Oklahoma Regional Director, Bureau of Indian Affairs, concerning improvements on Lots 6, 7, and 8, Block 16, Grayhorse Indian Village, Osage Reservation, Oklahoma. Appellant includes with her filing a copy of a notice of appeal dated November 26, 2002, which she filed with the Assistant Secretary - Indian Affairs. For the reasons discussed below, the Board docketed this appeal but dismisses it as untimely.

Appellant states that she received the Regional Director’s decision on or about October 31, 2002, and concedes that she did not mail a notice of appeal to the Board within 30 days after the date she received the decision. She contends, however, that her appeal should be deemed timely because she mailed a notice of appeal to the Assistant Secretary within the 30-day period.

The Regional Director’s decision correctly stated that any appeal must be filed with the Board within 30 days of Appellant’s receipt of the decision. The decision also included the Board’s correct address. The Board has consistently held that a notice of appeal is not timely when the appellant has been given correct appeal information but files a 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. See, e.g., Ducheneaux v. Great Plains Regional Director, 38 IBIA 237 (2002); Schaffer v. Aberdeen Area Director, 33 IBIA 255 (1999). In this case, the Assistant Secretary has not forwarded Appellant’s original notice of appeal to the

Board. Under the case law just cited, however, the notice would not be timely now if the Assistant Secretary were to forward it to the Board. 1/

Appellant's filing with the Board is postmarked December 20, 2002, more than 30 days after October 31, 2002. Accordingly, that filing is not a timely notice of appeal.

Appellant asks the Board to accept her notice of appeal under 43 C.F.R. § 4.310(d)(3), which provides: "For good cause the Board may grant an extension of time on its own initiative." She ignores the critical part of subsection 4.310(d), i.e., subsection 4.310(d)(1), which provides: "The time for filing or serving any document except a notice of appeal may be extended by the Board" (emphasis added). As this provision makes clear, the Board has no authority to grant an extension of time for filing a 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 is docketed but is dismissed as untimely.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

1/ As the Board noted in Ducheneaux, an appellant who ignores explicit appeal instructions and files her notice of appeal in the wrong office must bear the risk of delays in transmitting her notice of appeal to the Board.