



INTERIOR BOARD OF INDIAN APPEALS

Frank C. Estes, Sr. v. Acting Great Plains Regional Director, Bureau of Indian Affairs

39 IBIA 192 (11/21/2003)



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

FRANK C. ESTES, SR.,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 04-10-A
ACTING GREAT PLAINS REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	November 21, 2003

On October 17, 2003, the Board of Indian Appeals (Board) received a letter entitled "Appeal of Fraudulent Land Transaction" from Appellant Frank C. Estes. Upon review of the documents attached to Appellant's appeal, it appeared that Appellant was attempting to appeal a January 10, 2003, decision issued by the Acting Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), cancelling his Lease No. 25-006-9217 on the Lower Brule Sioux Tribe's Reservation. It further appeared that Appellant had filed a notice of appeal dated January 25, 2003, with the Assistant Secretary - Indian Affairs. For the reasons discussed below, the Board docketed this appeal but dismisses it as untimely.

The Board contacted the Regional Director for a copy of her January 10, 2003, decision. The Regional Director's decision correctly advised Appellant to file his appeal with the Board within 30 days of his receipt of her decision, which would have been on or about February 15, 2003.

The Board gave Appellant an opportunity to provide evidence that his appeal was timely filed with the Board in its October 31, 2003, order to show cause. On November 19, 2003, the Board received Appellant's Memorandum of Law, Points and Authorities, wherein he argued the merits of his case. However, Appellant did not provide any statement or evidence of timely filing.

The filing of a timely notice of appeal with the Board is jurisdictional. See 43 C.F.R. § 4.332(a). See, e.g., Renville-Pipeboy v. Acting Great Plains Regional Director, 39 IBIA 188, 189 (2003). The Board has consistently held that a notice of appeal is untimely if the appellant is given correct appeal information, but chooses to file his appeal with an office or official other

than the Board, and the notice is received by the Board outside the time for filing a notice of appeal. See, e.g., Jackson County, Kansas v. Acting Southern Plains Regional Director, 39 IBIA 78, 79 (2003), and cases cited there.

Appellant here was given correct appeal information, but filed his appeal with the Assistant Secretary - Indian Affairs instead of the Board. The Board did not receive the appeal within the timeframe set out in the regulations. Under these circumstances, the notice of appeal is untimely.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed this appeal from the Regional Director's January 10, 2003, decision, but dismisses it as untimely.

//original signed

Kathleen R. Supernaw
Acting Administrative Judge

//original signed

Kathryn A. Lynn
Administrative Judge