



INTERIOR BOARD OF INDIAN APPEALS

Leroy Morin v. Northwest Regional Director, Bureau of Indian Affairs

41 IBIA 87 (06/06/2005)



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

LEROY MORIN, : Order Docketing and
Appellant, : Dismissing Appeal
: :
v. : :
: Docket No. IBIA 05-70-A
NORTHWEST REGIONAL DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee. : June 6, 2005

Appellant Leroy Morin seeks review of a December 22, 2004, decision of the Northwest Regional Director, Bureau of Indian Affairs (Regional Director), issued under 25 C.F.R. Part 175, concerning a disputed bill that Appellant received from Mission Valley Power. The Board docketed the appeal, but dismisses it as untimely.

Appellant filed his notice of appeal on April 19, 2005, as evidenced by the postmark. See 43 C.F.R. § 4.310(a). The notice of appeal did not identify the date Appellant had received the Regional Director's decision, but in response to an order from the Board requesting further information, Appellant stated that he received the decision in December 2004.

Part 175 of 25 C.F.R. regulates electric power utilities administered by BIA. Subsection 175.61(a) provides, with exceptions not relevant here, that a Regional Director's decision made under Part 175 may be appealed to the Board, "pursuant to the provisions of 43 CFR part 4, subpart D." Subsection 175.61(c) provides that "[i]f no appeal is timely filed with the [Board], the [Regional] Director's decision shall be final for the Department." The Regional Director's decision specifically advised Appellant of his right of appeal to the Board in accordance with section 175.61. 1/

1/ The Regional Director's decision incorrectly provided Appellant with the Board's former address. Contrary to normal procedures, the postal service delivered the mis-addressed notice of appeal to the Board at its current address, and therefore the Regional Director's error was harmless. However, the Regional Director should amend the operations manual to include the Board's current address, as required by 25 C.F.R. § 175.61(a).

Under the applicable provisions of 43 C.F.R. Part 4, Subpart D, a notice of appeal from an administrative action or decision of a BIA official must be filed with the Board within 30 days after receipt by an appellant of the decision from which the appeal is taken. 43 C.F.R. § 4.332(a). A notice of appeal not timely filed must be dismissed for lack of jurisdiction. Id.

In this case, after being advised of his appeal rights under 25 C.F.R. § 175.61, Appellant waited nearly four months to file an appeal. The appeal clearly is untimely and must be dismissed.

Therefore, 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, but dismisses it for lack of jurisdiction. The Regional Director's decision is final for the Department.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Anita Vogt
Senior Administrative Judge