



INTERIOR BOARD OF INDIAN APPEALS

Charlotte J. Begaye v. Navajo Regional Director, Bureau of Indian Affairs

41 IBIA 109 (06/27/2005)



United States Department of the Interior

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

CHARLOTTE J. BEGAYE, : Order Reversing and
Appellant, : Remanding Decision
: :
v. : :
: Docket No. IBIA 05-51-A
NAVAJO REGIONAL DIRECTOR, : :
BUREAU OF INDIAN AFFAIRS, : :
Appellee. : June 27, 2005

Charlotte J. Begaye (Appellant) seeks review of a January 19, 2005, decision of the Navajo Regional Director, Bureau of Indian Affairs (Regional Director; BIA), which rejected as untimely her appeal from an undated decision of a Supervisory Natural Resource Specialist (SNRS) in the Regional Office. Upon review of the administrative record, the Board concludes that briefing for this appeal is not necessary; and for the reasons discussed below, the Board reverses the Regional Director's decision and remands the matter for consideration on the merits.

Appellant holds a grazing permit for a range management unit (RMU) on tribal lands in District 10, Unit 2, of the Navajo Reservation. In March 2002, in an ongoing dispute with other local residents, Appellant apparently fenced off or otherwise obstructed access to a portion of Apache County (Arizona) Route 569 that runs through the RMU. ^{1/} Subsequently, in an undated letter sent to Appellant on or about June 21, 2004, the SNRS informed Appellant that he had decided to cancel her RMU unless she reopened access to the road and replaced a cattle guard on the road that had been removed when the road was blocked. The SNRS advised Appellant of her appeal rights as follows:

If you do not agree with our action, you have the right to appeal this decision to the Navajo Regional Director, Bureau of Indian Affairs, P.O. Box 1060, Gallup, NM 87305, in accordance with 25 CFR Part 2. The Notice of Appeal must also be sent to me (person whose decision is being appealed) and

^{1/} The road is also referred to as the Owl Nest Canyon Road. Apparently in response to the ongoing dispute, the County has since deleted the road from its official road listing, pending resolution of the dispute. See July 14, 2004, Letter from Apache County District Manager to Appellant.

all other interested parties within 30 days of receipt of this administrative decision. A notice of appeal that is filed by mail is considered filed on the date that it is postmarked.

SNRS Letter at 2.

The SNRS's decision was mailed to Appellant at her place of employment, and the certified mail receipt card was signed on June 28, 2004, by an individual other than Appellant.

Appellant then filed a notice of appeal, which was addressed to the Regional Director, mailed on July 28, 2004, and received in the office of the Regional Director on August 2, 2004. On August 30, 2004, Appellant's attorney personally delivered a statement of reasons to the Regional Director.

In her January 19, 2005, decision, the Regional Director ignored Appellant's notice of appeal, apparently because it had not been filed with the SNRS, as required by 25 C.F.R. § 2.9(a), discussed below. The Regional Director did, however, acknowledge her receipt of Appellant's statement of reasons, which the Regional Director treated as the only appeal document that had been received. The Regional Director found that Appellant had received the SNRS decision on June 28, 2004, that the SNRS had properly notified Appellant of her appeal rights, and that Appellant's statement of reasons had been filed after the 30-day appeal period had expired. Therefore, the Regional Director dismissed the appeal as untimely.

Discussion

Under 25 C.F.R. § 2.9(a), an appellant seeking review of a decision of a subordinate BIA official within a region "must file" the notice of appeal "in the office of the official whose decision is being appealed." The appellant "must also send" a copy to the official who will decide the appeal and to all known interested parties. Id.

Subsection 2.7(c) of 25 C.F.R. provides, with an exception not relevant here, that "[a]ll written decisions [of BIA officials] shall include a statement that the decision may be appealed pursuant to [25 C.F.R. Part 2], identify the official to whom it may be appealed and indicate the appeal procedures, including the 30-day time limit for filing a notice of appeal." If a decision does not comply with subsection 2.7(c), the time period for filing an appeal is tolled. Id. § 2.7(b).

In the present case, the SNRS correctly advised Appellant of her right to appeal the decision to the Regional Director. He did not, however, inform Appellant that her notice of appeal must be "filed" with the SNRS within 30 days of receipt, as stated in subsection 2.9(a). Instead, the SNRS muddled the language of subsection 2.9(a), and stated that Appellant's notice of appeal "must also be sent" to the SNRS and to other interested parties within 30 days

of receipt. By failing to clearly state that the notice of appeal must be filed with the SNRS, and by lumping the SNRS with other interested parties in a category to whom the appeal “must also be sent,” the SNRS failed to reasonably describe the requirements of subsection 2.9(a). The “filing” requirement for a notice of appeal is jurisdictional. Knauf v. Portland Area Director, 32 IBIA 40, 42 (1998). The requirement to serve all interested parties is not. See Tendoy v. Portland Area Director, 33 IBIA 303, 308 (1999). Viewing the SNRS’s appeal instructions as a whole, the Board concludes that they failed to “indicate the appeal procedures, including the 30-day time limit for filing a notice of appeal,” 25 C.F.R. § 2.7(c), in a way that could reasonably be understood by an appellant. Under 25 C.F.R. § 2.7(b), the SNRS’s failure to comply with subsection 2.7(c) tolled the time period for filing an appeal, and therefore Appellant’s appeal to the Regional Director was timely and should have been considered on the merits. 2/

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 reverses the Regional Director’s January 19, 2005, decision, and remands the matter to the Regional Director to consider and decide on the merits. 3/

I concur:

// original signed

Steven K. Linscheid
Chief Administrative Judge

// original signed

Anita Vogt
Senior Administrative Judge

2/ Providing clear appeal instructions, pursuant to 25 C.F.R. § 2.7(c), is not difficult. By now, BIA Superintendents often use standardized language, which states in part:

“This decision may be appealed to the [Regional Director] in accordance with the regulations in 25 CFR Part 2 (copy enclosed). Your notice of appeal must be filed in this office within 30 days of the date you receive this decision. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to this office.”
See Siebol v. Portland Area Director, 29 IBIA 124 (1996). Subsection 2.7(c) does not require this exact language for advising an interested party of a right of appeal to a Regional Director, but it does require that the description of appeal procedures be reasonably clear.

3/ Even if the Regional Director had been correct in concluding that Appellant’s appeal was untimely, it was not appropriate for her to completely ignore Appellant’s notice of appeal — which she clearly had received — as though it did not even exist. The Regional Director should have included the notice of appeal in the administrative record. If she believed it was not properly filed and should not be considered on the merits, she should have explained that.