



## INTERIOR BOARD OF INDIAN APPEALS

Alice Castillo, Ann Dalson, Darrell Simmons, and Rebecca M. Swearingen v. Pacific  
Regional Director, Bureau of Indian Affairs

43 IBIA 9 (04/06/2006)

Related Board case:  
46 IBIA 209



## 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

ALICE CASTILLO, ANN DALSON, : Order Docketing and Dismissing  
DARRELL SIMMONS, and REBECCA : Appeal  
M. SWEARINGER, :  
Appellants, :  
v. : Docket No. IBIA 06-59-A  
PACIFIC REGIONAL DIRECTOR, :  
BUREAU OF INDIAN AFFAIRS, :  
Appellee. : April 6, 2006

On March 31, 2006, the Board received a notice of appeal from Alice Castillo, Ann Dalson, Darrell Simmons, and Rebecca M. Swearinger (Appellants), through Dennis G. Chappabitty, Esq. Appellants seek review of a February 15, 2006 decision of the Pacific Regional Director. The decision dismissed Appellants' challenge to the inclusion of the descendants of Ida Louella Henthorne-Pata on the list of registered voters for a September 26, 1998 election of the Paskenta Band of Nomlaki Indians of California. The Board docketed the appeal, but dismisses it for lack of jurisdiction because it is untimely.

Because the notice of appeal was filed six weeks after the Regional Director issued his decision, 1/ the Board requested from the Regional Director a copy of the certified mail return receipt card in order to determine when Appellants received the decision. The return receipt card, signed by Appellants' counsel, shows that he received the decision on February 17, 2006. Appellants' counsel noted in a cover letter attached to the notice of appeal that the appeal initially had been sent to an outdated address for the Board. 2/ After being returned by the postal service, the appeal was sent to the Board at its correct address.

---

1/ Appellants sent their notice of appeal by commercial courier, and therefore the date of filing was the date of delivery, March 31, 2006. See 43 C.F.R. § 4.310(a).

2/ Appellants' counsel included with the notice of appeal the envelope used to mail the original notice of appeal, which shows that it was mailed on March 14, 2006. Thus, had it been mailed to the correct address, it would have been timely.

A notice of appeal must be filed with the Board within 30 days after an appellant receives the decision from which the appeal is taken. 43 C.F.R. § 4.332(a). The 30-day time period is jurisdictional. Id.

The Regional Director's decision correctly advised Appellants of the Board's current address and included the 30-day time limit for filing an appeal with the Board. Appellant did not mail the appeal to the correct address until after the 30-day time period had expired. When an appellant has been provided with correct appeal instructions, but mails the appeal to an incorrect address, and the appeal is filed with the Board outside the 30-day time period, it must be dismissed for lack of jurisdiction. See Gardner v. Rocky Mountain Regional Director, 41 IBIA 89 (2005). An appellant who fails to follow correct appeal instructions bears the risk that the appeal will not be timely filed. See Twenty-Seven Individual Landowners on the Standing Rock Reservation v. Great Plains Regional Director, 40 IBIA 239, 240 (2005).

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.

I concur:

\_\_\_\_\_  
// original signed  
Steven K. Linscheid  
Chief Administrative Judge

\_\_\_\_\_  
// original signed  
Amy B. Sosin  
Acting Administrative Judge