



INTERIOR BOARD OF INDIAN APPEALS

Elaine LeCompte v. Acting Great Plains Regional Director, Bureau of Indian Affairs

46 IBIA 242 (02/07/2008)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ELAINE LeCOMPTE,)	Order Docketing and Dismissing Appeal
Appellant,)	
)	
v.)	
)	Docket No. IBIA 08-38-A
ACTING GREAT PLAINS REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	February 7, 2008

On January 31, 2008, the Board of Indian Appeals (Board) received a copy of a notice of appeal and statement of reasons from Elaine LeCompte (Appellant), through Al Arendt, Esq. The appeal, which had not previously been received by the Board, is from a May 4, 2007, decision (Decision) of the Acting Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), in which she upheld a July 13, 2006, decision by the Cheyenne River Agency Superintendent concerning hay that was harvested on Tract No. 5113,¹ which was leased by Appellant. We docket this appeal, but dismiss it for lack of jurisdiction because it is untimely.

Appellant’s submission to the Board, which is postmarked January 29, 2008, consists of a cover letter and several attachments: the Regional Director’s May 4 decision; a letter addressed to the Assistant Secretary – Indian Affairs (Assistant Secretary); a notice of appeal from the Decision (including a statement of reasons); and a certificate of service reflecting the persons served with the notice of appeal. The Decision correctly advised Appellant that a notice of appeal “**must be mailed [to the Board] within 30 days of the date you received the Regional Director’s decision,**” Decision at 3, provided Appellant with the Board’s correct address, and advised that “[n]o extension of time may be granted for filing [the] notice of appeal,” *id.* at 4. The remaining attachments are dated May 22, 2007, and none of them mentions the Board. The letter to the Assistant Secretary requests that he “process” her appeal.

¹ Tract No. 5113 is described as the SE¼, Section 30, Township 12 North, Range 30 East of the Black Hills Meridian.

A notice of appeal from a decision of a BIA Regional Director must be filed with the Board within 30 days after receipt by the appellant of the decision from which the appeal is taken. 43 C.F.R. § 4.332(a). The effective date for filing a notice of appeal with the Board is the date of mailing or the date of personal delivery, if not mailed. *Id.* § 4.310(a)(1). The 30-day deadline for filing a notice of appeal is jurisdictional. *Id.* § 4.332(a); *Wick v. Midwest Regional Director*, 44 IBIA 20 (2006); *Claymore v. Great Plains Regional Director*, 43 IBIA 274 (2006). Untimely appeals must be dismissed. *Claymore*, 43 IBIA 274; *Saguaro Chevrolet, Inc. v. Western Regional Director*, 43 IBIA 85 (2006).

Appellant concedes that she failed to file a copy of her notice of appeal with the Board. Letter from Appellant to Board, Jan. 28, 2008 (“It is clear that we timely attempted to file this appeal, but failed to notify your office.”). Appellant asserts that BIA and the Assistant Secretary timely received their copies and argues that BIA should have transmitted her appeal to the Board. Appellant suggests that her untimeliness should be excused because she served the necessary parties and because they failed to forward her appeal to the Board.

Appellant’s assertion that she sent copies of her notice of appeal to interested parties does not satisfy the regulatory requirement that she timely file her notice of appeal with the Board. *See* 43 C.F.R. § 4.332(a). The Board does not have the authority to ignore duly-promulgated regulations. *Flynn v. Acting Rocky Mountain Regional Director*, 42 IBIA 206, 213 (2006).

Appellant also claims that she recently learned, “after repeated letters,” that BIA “failed to process this appeal in any way, shape, or form,” and “never forwarded the appeal on.” Letter from Appellant to Board, Jan. 28, 2008. We reject this argument for several reasons. First, it is Appellant’s burden to ensure that the Board receives her notice of appeal, not BIA’s. *See* 43 C.F.R. § 4.332(a); *Putnam v. Muskogee Area Director*, 21 IBIA 234, 235 (1992) (“The burden of filing is on the appellant.”). The Board consistently has held that an appellant who ignores explicit appeal instructions and files her notice of appeal in the wrong office bears the risks of delays in transmitting her notice of appeal to the Board. *See Wick*, 44 IBIA at 21. Moreover, BIA does not administer any aspect of appeals before the Board or otherwise “process” appeals for the Board.² Finally, appellants are required to serve BIA with a copy of any administrative appeal to the Board. 43 C.F.R.

² The Board is not part of BIA but is part of the Office of Hearings and Appeals within the Department of the Interior. *See* 43 C.F.R. § 4.1.

§ 4.333(a). To the extent that BIA received a service copy of Appellant's appeal and letter to the Assistant Secretary, nothing in either of these documents suggests that any action by BIA was necessary.

Appellant's notice of appeal was not filed with the Board until January 29, 2008, as shown by the postmark on the envelope in which it was mailed. Because Appellant's appeal was not filed within the jurisdictional 30-day appeal period, this appeal 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, this appeal from the Regional Director's May 4, 2007, decision is docketed but dismissed as untimely.

I concur:

 // original signed
Debora G. Luther
Administrative Judge

 // original signed
Steven K. Linscheid
Chief Administrative Judge