



INTERIOR BOARD OF INDIAN APPEALS

Chuck Jacobs v. Acting Great Plains Regional Director, Bureau of Indian Affairs

48 IBIA 81 (10/29/2008)

Denying reconsideration of:

47 IBIA 183



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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CHUCK JACOBS,)	Order Denying Reconsideration
Appellant,)	
)	
v.)	
)	Docket No. IBIA 08-97-A
ACTING GREAT PLAINS REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	October 29, 2008

The Board of Indian Appeals (Board) dismissed Appellant Chuck Jacobs’s appeal on August 20, 2008, after Appellant failed to respond to the Board’s June 3, 2008, order to show cause. 47 IBIA 183. That order directed Appellant to explain on or before July 7, 2008, why the Board should not summarily affirm the Regional Director’s decision to award a grazing permit for Range Unit No. 506 to Curtis Temple. Appellant received the order of dismissal on September 3, 2008, as shown by the certified mail receipt card returned to the Board. On September 8, 2008, the Board received a brief from Appellant dated July 7, 2008, and entitled “Appellants’ Response to IBIA Order to Show Cause Against Summary Judgment.” Because a decision was issued before receipt of Appellant’s brief, the Board considers whether the brief might constitute grounds for reconsideration of the order of dismissal for failure to prosecute. We deny reconsideration because it appears that Appellant’s brief — as a response to the Board’s order to show cause — was not timely filed. Even if Appellant believed his brief had been timely filed, the Board’s August 20 decision put Appellant on notice that the Board had not received it, and Appellant did not seek reconsideration within 30 days following our decision to explain that he believed he had timely responded to the Board’s order to show cause.

Discussion

We first address *when* Appellant’s brief was filed, which turns on which of two dates on the mailing envelope is the actual date of mailing. It appears that Appellant’s brief was mailed — and, therefore, filed — on September 4, 2008.

The date of filing briefs with the Board is the date of mailing or, where the item is personally delivered, the date of delivery. 43 C.F.R. § 4.310(a)(1). The brief received by the Board from Appellant was delivered in an envelope that bears two pre-printed postage labels. Each label, in turn, bears a different date. The first label identifies the “date of sale” as July 7, 2008, the amount of postage, a space for the delivery address, and a certified mail number (420 22203 9171 1429 7589 0007 0156 00). The character of the label and the “USPS® First Class Mail®” printed thereon suggest that the label was computer-generated. The second label, applied partly on top of the first, appears to have been printed by the Postal Service, reads “U.S. Postage Paid,” and identifies a different amount of postage than the first label, names the city from which the item was mailed (Rapid City, South Dakota), and bears a postmark date of September 4, 2008.

If July 7 were the actual date of mailing, Appellant’s brief would have been filed timely despite the substantial delay in its delivery to the Board. If the second postmark date of September 4, 2008, were the actual date of mailing, the brief would be untimely. The Postal Service’s “track and confirm” feature on its website (www.usps.gov) states that on September 4, the Postal Service in Rapid City, South Dakota, “accepted” item no. 420 22203 9171 1429 7589 0007 0156 00, which is the certified mail number found on the first label. Therefore, it appears that, as a response to the Board’s order to show cause, Appellant’s brief is untimely submitted.

Second, even assuming the brief were timely filed, the Board’s order of dismissal for failure to prosecute clearly put Appellant on notice that the Board had received no response from him to the order to show cause. Appellant received the Board’s decision on September 3, and thus clearly had time — within the 30-day period following the Board’s decision — to file a formal petition for reconsideration objecting to the dismissal for failure to prosecute. He has not done so. Appellant’s brief, standing alone, does not address the specific grounds for dismissal, i.e., his failure to respond to the Board’s order to show cause by July 7, and, thus, no “extraordinary circumstances” are shown that would trigger the Board’s reconsideration of the dismissal. *See* 43 C.F.R. § 4.315.¹ For these reasons, we decline to reconsider our dismissal on August 20, 2008, of Appellant’s appeal.

¹ The deadline for Appellant to seek reconsideration expired on September 19, 2008. *See* 43 C.F.R. § 4.315.

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 denies reconsideration of 47 IBIA 183.

I concur:

 // original signed
Debora G. Luther
Administrative Judge

 // original signed
Steven K. Linscheid
Chief Administrative Judge Appellant