



INTERIOR BOARD OF INDIAN APPEALS

Robert Mize v. Northwest Regional Director, Bureau of Indian Affairs

51 IBIA 262 (05/20/2010)

Reconsidered and vacated:

51 IBIA 298

Appeal dismissed:

52 IBIA 51



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

ROBERT MIZE,)	Order Docketing and Dismissing Appeal
Appellant,)	
)	
v.)	
)	Docket No. IBIA 10-097
NORTHWEST REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	May 20, 2010

Appellant Robert Mize appealed to the Board of Indian Appeals (Board) from the March 10, 2010, decision (March 10 Decision or Decision) of the Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), in which the Regional Director affirmed the September 10, 2009, decision of BIA's Puget Sound Agency Superintendent to increase the annual rental payment, effective November 1, 2009, for Appellant's Lease No. 123 2082419924, covering Lot 108, Block 1, of the Hermosa Point Summer Homesites on the Tulalip Reservation in Snohomish County, Washington.¹ We docket but dismiss this appeal for lack of jurisdiction because it is untimely.

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 30-day deadline for filing a notice of appeal is jurisdictional. *Id.*; *Wick v. Midwest Regional Director*, 44 IBIA 20 (2006); *Claymore v. Great Plains Regional Director*, 43 IBIA 274 (2006). Untimely appeals must be dismissed. 43 C.F.R. § 4.332(a); *Claymore*, 43 IBIA at 274; *Saguaro Chevrolet, Inc. v. Western Regional Director*, 43 IBIA 85 (2006).

The Board has consistently held that a notice of appeal is not timely when the appellant has been given correct appeal information but files a notice of appeal with an official other than the Board, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations. *See, e.g., Wick*, 44 IBIA at 21 (2006);

¹ The lease is situated in Sec. 21, T. 30 N., R. 4 E., Willamette Meridian, Snohomish County, Washington.

Wilkins v. Rocky Mountain Regional Director, 39 IBIA 21 (2003). An appellant who ignores appeal instructions and files his notice of appeal in the wrong office bears the risks of delays in transmitting his notice of appeal to the Board. *Wick*, 44 IBIA at 21.

The Board has examined the appeal instructions provided to Appellant by the Regional Director, and concludes that they adequately advised Appellant of his appeal rights. The instructions informed him that the March 10 Decision “may be appealed to the [Board],” provided the Board’s correct address, and emphasized the time for submitting an appeal. March 10 Decision at 5. In particular, the instructions advise Appellant that his “notice of appeal *sent to the [Board]* must certify that [copies have been sent to certain parties].” *Id.* (emphasis added). Finally, the Decision informed Appellant that “[n]o extension of time may be granted for filing a notice of appeal.” *Id.*

The March 10 Decision notes that it was sent to Appellant by certified mail no. 7002 2030 0005 8314 4001. According to the tracking service available on the Postal Service’s website, www.usps.gov, the Decision was delivered on March 16, 2010. Therefore, Appellant had 30 days from March 16 — until April 15, 2010 — to mail or deliver his notice of appeal to the Board. Instead of sending his appeal to the Board, Appellant mailed his notice of appeal to the Regional Director, who forwarded the appeal to the Board where it was received on May 14, 2010. No other copy of the notice of appeal was received by the Board, nor does the copy received from the Regional Director suggest that Appellant sent his appeal to the Board.

Because the Board received Appellant’s notice of appeal nearly 30 days after the time to appeal had expired, we find the appeal to be untimely and, pursuant to the Board’s regulations, we must dismiss the appeal.

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 March 10, 2010, decision is docketed but dismissed as untimely.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Sara B. Greenberg
Administrative Judge*

*Interior Board of Land Appeals, sitting by designation.