



INTERIOR BOARD OF INDIAN APPEALS

Rainell White Shirt v. Acting Rocky Mountain Regional Director, Bureau of Indian Affairs

52 IBIA 34 (08/03/2010)

Dismissing Petition for Reconsideration of:
47 IBIA 17



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

RAINELL WHITE SHIRT,)	Order Dismissing Petition for
Appellant,)	Reconsideration
)	
v.)	
)	
ACTING ROCKY MOUNTAIN)	Docket No. IBIA 08-047-1
REGIONAL DIRECTOR, BUREAU)	
OF INDIAN AFFAIRS,)	
Appellee.)	August 3, 2010

On April 17, 2008, the Board of Indian Appeals (Board) dismissed for lack of prosecution an appeal filed by Rainell White Shirt (Appellant) in which she challenged a January 11, 2008, decision by the Acting Rocky Mountain Regional Director, Bureau of Indian Affairs. 47 IBIA 17. The Board's decision was delivered to Appellant's address of record by certified mail in April 2008. On July 28, 2010, the Board received a petition for reconsideration from Appellant.

Petitions for reconsideration of a Board decision "must be filed with the Board within 30 days from the date of the decision. . . ." 43 C.F.R. § 4.315; *Pappin v. Eastern Oklahoma Regional Director*, 50 IBIA 353 (2009); *First v. Rocky Mountain Regional Director*, 42 IBIA 188 (2006). Thus, the time for Appellant to file a petition for reconsideration by mail expired in May 2008, and the Regional Director's decision became final at that time. Appellant's petition for reconsideration, filed over two years later, is untimely. The Board lacks authority to consider untimely requests for reconsideration.

It appears that, when she received the Board's decision dismissing her appeal, Appellant attempted to obtain review from the Assistant Secretary – Indian Affairs (Assistant Secretary). She claims that she has been "waiting for a response." Petition for Reconsideration. The Assistant Secretary is not part of the Board, *see generally* 43 C.F.R. §§ 4.1, 4.2(a), and Appellant could not preserve a right to seek reconsideration from the Board by first seeking review from the Assistant Secretary, *cf.*, *Matt v. Acting Billings Area*

Director, 28 IBIA 108 (1995) (filing a notice of appeal with the Assistant Secretary does not toll the time for filing a notice of appeal with the Board).

Appellant also provided the Board with copies of certified mail receipts, dated March 19, 2008, with her petition for reconsideration. She explains that the receipts confirm that she complied with the Board's order in February 2008 to serve a copy of her notice of appeal on the interested parties. The Board's order also required Appellant to notify the Board no later than March 19, 2008, that she had complied with the order. Appellant did not comply with this latter requirement, for which reason her appeal was dismissed. *See* 47 IBIA 17. Because we lack authority to consider untimely requests for reconsideration, we have given no consideration to Appellant's petition for reconsideration.

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 dismisses Appellant's petition for reconsideration as untimely.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge