



INTERIOR BOARD OF INDIAN APPEALS

J.R. Thompson v. Muskogee Area Director, Bureau of Indian Affairs

20 IBIA 34 (05/09/1991)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

J. R. THOMPSON,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 91-81-A
MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	May 9, 1991

On May 8, 1991, the Board of Indian Appeals received a copy of a notice of appeal that was transmitted to it by the Acting Director, Trust and Economic Development, Bureau of Indian Affairs (BIA). The notice had been filed by J. R. Thompson, pro se, who sought review of a February 15, 1991, decision issued by the Muskogee Area Director, BIA, holding that Oil and Gas Lease 602-2450 (66021) Peggy Berryhill King, Creek 9670, had expired for failure to produce oil and/or gas in paying quantities. The notice was addressed to the Assistant Secretary - Indian Affairs and showed that copies were sent to Peggy Berryhill King and the Muskogee Area Office, BIA.

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that the appeal be dismissed with prejudice.

The Area Director's decision concludes:

This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. * * * you must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs, * * * (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties. * * *

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal. [Emphasis in original.]

Appellant has failed to file a timely notice of appeal. The Area Director's decision clearly informed appellant that his notice of appeal was to be filed with the Board, and that copies were to be sent to the Assistant Secretary, the Muskogee Area Office, and interested parties. Appellant, however, chose to file his appeal with the Assistant Secretary, without sending even a copy of the notice to the Board. The Board has consistently held that a notice of appeal is not timely when the appellant is given the proper appeal information, but files its notice of appeal with an official other than the Board. The filing of a timely notice of appeal in the office designated in the regulations is jurisdictional. See 43 CFR 4.332(a); Smith v. Muskogee Area Director, 20 IBIA 1 (1991); Maynard v. Acting Assistant Aberdeen Area Director, Indian Programs, 19 IBIA 273 (1991), and cases cited therein. ^{1/}

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Muskogee Area Director's February 15, 1991, decision is dismissed with prejudice as not being timely filed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge

^{1/} In an April 9, 1991, letter to appellant, the Director, Office of Trust and Economic Development, stated that the appeal was timely filed. For the reasons discussed in this order, the Director's statement is not correct.