



INTERIOR BOARD OF INDIAN APPEALS

Dena Baumann v. Acting Aberdeen Area Director, Bureau of Indian Affairs

21 IBIA 279 (03/30/1992)



United States Department of the Interior

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

DENA BAUMANN,	:	Order Docketing and Dismissing
Appellant,	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 92-135-A
ACTING ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 30, 1992

On March 27, 1992, the Board of Indian Appeals received a notice of appeal from Dena Baumann, by transfer from the Office of Trust and Economic Development, Bureau of Indian Affairs (BIA). The notice of appeal is dated February 20, 1992, and is addressed to the Assistant Secretary - Indian Affairs. It indicates that appellant is attempting to challenge a January 31, 1992, decision of the Acting Aberdeen Area Director, BIA, concerning cancellation of a grazing lease and assessment of liquidated damages.

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.

The Acting Area Director's decision concluded:

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 you file [a] notice of appeal, the Board of Indian Appeals will notify you of further procedures.

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.

Appellant's notice of appeal states that copies were sent to the Area Director and to the Cheyenne River Agency Superintendent. It does not state that a copy was sent to the Board, and no copy was received by the Board prior to March 27, 1992.

Appellant has failed to file a timely notice of appeal. The Acting Area Director's decision clearly informed her that her notice of appeal was to be filed with the Board and provided the Board's correct mailing address. Appellant chose, however, to file her notice of appeal with the Assistant Secretary - Indian Affairs. The Board has consistently held that a notice of appeal is not timely when the appellant has been given the correct appeal information but files his/her 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 Board's regulations. E.g., Allen v. Muskogee Area Director, 21 IBIA 236 (1992); Roach v. Acting Billings Area Director, 20 IBIA 166 (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 is docketed and dismissed as untimely filed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge

^{1/} The Board notes that appellant's notice of appeal was received by BIA on February 27, 1992, but not transmitted to the Board until March 26, 1992. An appellant who ignores explicit appeal instructions, and files his/her notice of appeal in the wrong office, must bear the risk of delays in transmitting the notice to the Board. Roach, 20 IBIA at 167 n.1.