



INTERIOR BOARD OF INDIAN APPEALS

Glenna Davenport, et al. v. Acting Portland Area Director, Bureau of Indian Affairs

22 IBIA 60 (06/02/1992)



United States Department of the Interior

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

GLENNA DAVENPORT,	:	Order Docketing and Dismissing
DOUGLAS M. THORNE, and	:	Appeal
KAREN L. THORNE,	:	
Appellants	:	
	:	
v.	:	Docket No. IBIA 92-159-A
	:	
ACTING PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 2, 1992

On June 1, 1992, the Board of Indian Appeals (Board) received a notice of appeal from Glenna Davenport, Douglas M. Thorne, and Karen L. Thorne (appellants). Appellants sought review of an April 7, 1992, decision of the Acting Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), adjusting the annual rent for Lease No. 7708, Lot 21, Raymond Paul Tract, on the Swinomish Indian Reservation, Washington. The notice of appeal was transferred to the Board by the Acting Director, Office of Trust and Economic Development, 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.

The 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. * * *

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.]

According to the return receipt card, a copy of which was provided to the Board by the Portland Area Office, appellant Davenport received the Area Director's decision on April 11, 1992. All three appellants have the same mailing address.

Appellants have failed to file a timely notice of appeal. The Area Director's decision clearly informed appellants that their notice of appeal was to be filed with the Board, and provided the Board's correct mailing address. Appellants chose, however, to file their 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 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 Board's regulations. See, e.g., Baumann v. Acting Aberdeen Area Director, 21 IBIA 279 (1992), 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 Acting Portland Area Director's April 7, 1992, decision is dismissed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

^{1/} The Board notes that appellants' notice of appeal was received by BIA on May 15, 1992, but was not received by the Board until June 1, 1992. Appellants who ignore explicit appeal instructions, and file a notice of appeal in the wrong office must bear the risk of delays in transmitting the notice to the Board. Baumann, 21 IBIA at 280, n.1.