



INTERIOR BOARD OF INDIAN APPEALS

Julia H. Reeves v. Anadarko Area Director, Bureau of Indian Affairs

25 IBIA 40 (11/24/1993)

Reconsideration denied:
25 IBIA 64



United States Department of the Interior

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

JULIA H. REEVES,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 94-19-A
ANADARKO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	November 24, 1993

On November 22, 1993, the Board received, by transmittal from the Anadarko Area Director, Bureau of Indian Affairs (Area Director), an October 4, 1993, letter from appellant Julia H. Reeves. Appellant's letter concerned a September 27, 1993, decision issued by the Area Director, which denied her request for approval of gift deed applications. Although appellant's letter did not state that it was intended to be a notice of appeal, the Area Director ultimately decided that appellant may have intended it as such and therefore transmitted it to the Board.

The Area Director's September 27, 1993, 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 are not represented by an attorney, you may request assistance from this office in the preparation of your appeal. If you file a notice of appeal, the Board of Indian Appeals will notify you of further appeal 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. [Emphasis in original.]

Appellant did not file a notice of appeal with the Board. Instead she wrote to the Area Director discussing his September 27, 1993, decision and requesting assistance in the preparation of her appeal. It now appears likely that she intended her October 4, 1993, letter to be her notice of appeal and that she expected the Area Director to file it for her, even though she did not specifically request that he do so.

The Area Director advised appellant in his September 27, 1993, decision that she could request assistance from his office in preparing her appeal. He also clearly advised her, however, that she must file her notice of appeal with the Board and gave her the Board's address. It was appellant's responsibility to file her notice of appeal with the Board in accordance with the Area Director's instructions.

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. Davenport v. Acting Portland Director, 22 IBIA 60 (1992); 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 is docketed and dismissed as untimely filed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

1/ The Area office received appellant's letter on October 7, 1993, and did not transmit it to the Board until November 16, 1993. It appears possible that part of the delay may have resulted from difficulties in determining what the letter was actually seeking.

Even if the Area Office may be faulted for not transmitting the letter sooner, 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. E.g., Davenport, 22 IBIA at 61 n. 1.