



INTERIOR BOARD OF INDIAN APPEALS

Dick Burland v. Portland Area Director, Bureau of Indian Affairs

26 IBIA 81 (06/22/1994)



United States Department of the Interior

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

DICK BURLAND,	:	Order Dismising Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 94-114-A
PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 22, 1994

On May 12, 1994, the Board of Indian Appeals (Board) received a copy of a notice of appeal from Dick Burland (appellant). Appellant sought review of a March 29, 1994, decision of the Portland Area Director, Bureau of Indian Affairs (Area Director), concerning an Environmental Assessment for the Mud Lake Trail Homesites which were to be located on 10 acres of land owned by the Confederated Salish and Kootenai Tribes.

The Area Director's decision concluded with Section VI, Notice of Right to Further Appeal, which stated:

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 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 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.]

The Board first became aware that appellant had attempted to file an appeal through a telephone call from the Tribes. Subsequently, the Tribes provided the Board with a copy of the notice. The copy was not addressed to anyone, but shows service on the Flathead Agency Superintendent, the Area Director, the Tribes, and the Assistant Secretary - Indian Affairs. The Board's name and/or address did not appear anywhere on the copy received by the Board.

43 CFR 4.332 (a) states that a notice of appeal from the decision of a BIA Area Director must be filed with the Board, and that an untimely notice of appeal must be dismissed. This information was also provided to appellant in the Area Director's decision.

By order dated May 17, 1994, appellant was advised that the Board has consistently held that a notice of appeal must be dismissed as being untimely when an appellant is given the correct appeals information, but chooses to file its appeal in a different office, resulting in receipt of the appeal by the Board after the time for filing a notice of appeal. See, e.g., Hominy Indian Village Committee v. Muskogee Area Director, 25 IBIA 271 (1994); Heuston v. Muskogee Area Director, 21 IBIA 240 (1992). Appellant was given until June 10, 1994, to show cause why its appeal should not be dismissed as being untimely filed.

The Board has not received a response from appellant.

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 Portland Area Director's March 29, 1994, decision is dismissed as being untimely.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge