



INTERIOR BOARD OF INDIAN APPEALS

Aleta Speakthunder Cole v. Billings Area Director, Bureau of Indian Affairs

28 IBIA 193 (09/13/1995)



United States Department of the Interior

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

ALETA SPEAKTHUNDER COLE, Appellant	:	Order Docketing and Dismissing Appeal
v.	:	
BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	Docket No. IBIA 95-159-A September 13, 1995

On August 22, 1995, the Board of Indian Appeals received a letter from Aleta Speakthunder Cole. The letter, dated August 14, 1995, stated that Cole had sent a notice of appeal to the Board on April 14, 1995, seeking review of a March 16, 1995, decision issued by the Billings Area Director, Bureau of Indian Affairs (Area Director; BIA).

The Board did not receive Cole's notice of appeal. Therefore, it ordered her to show why her appeal should not be dismissed as untimely. Because Cole indicated that she had mailed her notice of appeal to the Board by certified mail, the Board informed her that she could prove mailing of the notice by submitting a copy of the return receipt (green card) or the receipt for certified mail, showing that she mailed the notice to the Board on or about April 14, 1995, and/or that it was received in the Office of Hearings and Appeals.

In her response, Cole states:

A review of the events of the 14th of April provided the following discovery. I certified the letter to the Assistant Secretary of Interior - Indian Affairs, which is your employer and the BIA's, instead of certifying your letter as I intended. Your Notice of Appeal was mailed, but was mailed regular mail along with the remaining interested parties. The Area Director received his by regular mail as their enclosed April 28th letter indicates. The local Agency received their letter as did H & H Farms, therefore, you must have received yours and lost it or the United States mail lost it.

In American Land Development Corp. v. Acting Phoenix Area Director, 25 IBIA 120, recon. denied, 25 IBIA 197 (1994), the Board held that, where the Board does not receive a notice of appeal alleged to have been timely filed, the burden is on the appellant to show that the notice was timely mailed or delivered to the Board at its correct address. The fact that Cole mailed copies of her notice of appeal to the parties to this appeal, and that the parties received their copies, is insufficient to show that Cole mailed her notice of appeal to the Board.

Cole may also be contending that, because a copy of her notice of appeal was received by the Assistant Secretary - Indian Affairs, her notice of appeal should be considered timely filed. Cole is mistaken in her evident belief that the Board is under the supervision of the Assistant Secretary. The Board is a component of the office of the Secretary of the Interior and is entirely independent of the Assistant Secretary - Indian Affairs and the BIA. Moreover, where an Area Director's decision provides correct appeal instructions, as did the Area Director's decision in this case, a notice of appeal is not timely when it is filed with the Assistant Secretary, rather than the Board, and the Board does not receive the notice within the time period specified in the regulations. E.g., After Buffalo v. Acting Billings Area Director, 28 IBIA 131, recon. denied, 28 IBIA 159 (1995). Therefore, the copy of Cole's notice of appeal received by the Assistant Secretary cannot be considered a properly filed notice of appeal.

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 but is dismissed as untimely.

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Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge