



INTERIOR BOARD OF INDIAN APPEALS

Nathan Thunderhawk v. Acting Aberdeen Area Director, Bureau of Indian Affairs

31 IBIA 37 (06/03/1997)



United States Department of the Interior

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

NATHAN THUNDERHAWK, Appellant	:	Order Docketing and Dismissing
	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 97-129-A
ACTING ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	
	:	
	:	June 3, 1997

Appellant Nathan Thunderhawk seeks review of an April 3, 1997, decision issued by the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director), placing a hold on Appellant's Individual Indian Money account. The Board dismisses this appeal as untimely.

The Area Director's decision states:

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 4.3104.340.

Your notice of appeal to the Board must be * * * mailed within 30 days of the date you receive this decision. * * *

* * * * *

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.

Although the Area Director's decision states that it was sent by certified mail, return receipt requested, in a note dated May 27, 1997, the Area Office informed the Board that the decision was not sent by certified mail. Therefore, the Area Director cannot prove when Appellant received the decision.

Appellant's Notice of Appeal is dated April 8, 1997. The Board concludes that the date on Appellant's Notice of Appeal is evidence of the fact that he had received the Area Director's decision by April 8, 1997. Thus, Appellant's Notice of Appeal should have been postmarked on or before May 8, 1997. However, the Notice of Appeal was not postmarked until May 19, 1997. Under these circumstances, the Board concludes that Appellant has failed to file a timely appeal.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Acting Aberdeen Area Director's April 3, 1997, decision is docketed and dismissed as untimely.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge