



INTERIOR BOARD OF INDIAN APPEALS

Stephen Browne v. Pacific Regional Director, Bureau of Indian Affairs

37 IBIA 200 (04/09/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

STEPHEN BROWNE,
Appellant

v.

PACIFIC REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Docketing and Dismissing
: Appeal
:
:
: Docket No. IBIA 02-87-A
:
:
: April 9, 2002

On March 25, 2002, the Board received, by transmittal from the Acting Pacific Regional Director, Bureau of Indian Affairs, a copy of a notice of appeal signed by Stephen Browne (Appellant). The notice was dated February 18, 2002, and indicated that Appellant sought review of a January 24, 2002, decision issued by the Regional Director concerning Appellant's recall from the office of Chairman of the Elem Indian Colony (Tribe). The copy of the notice of appeal transmitted by the Regional Director was the first copy received by the Board.

The Regional Director's decision correctly informed Appellant that his notice of appeal must be filed with the Board and provided the Board's address as of the date of the decision. ^{1/} The decision also correctly stated that Appellant's notice of appeal must be mailed to the Board within 30 days of Appellant's receipt of the decision.

The return receipt for certified mail (green card) for Appellant's copy of the Regional Director's decision showed that he received the decision on January 29, 2002. The Board therefore ordered Appellant to show that he had filed a timely notice of appeal. The Board's order stated:

In order to show that he filed a timely notice of appeal, Appellant must show that he mailed (or sent by delivery service offering receipts) his notice of appeal to the Board within 30 days after January 29, 2002. Acceptable proof of timely filing would include a mailing receipt for certified mail or receipt from a delivery service showing the date of delivery to the service."

^{1/} The Board moved to its present address after the Regional Director's decision was issued. The U.S. Postal Service has routinely forwarded mail addressed to the Board's former address.

In response to the Board's order, Appellant states that he mailed his notice of appeal to the Board. He then states: "It clearly appears the IBIA has moved and the address it was sent to did not provide proof of receipt or that it had not been received. The U.S. Post Office may have experienced postage machine or computer problems that did not display certification." Appellant furnishes copies of the return receipts for four other copies of his notice of appeal. However, he furnishes neither a return receipt nor a mailing receipt for the Board's copy of his notice of appeal.

The Board finds that Appellant has failed to show that he filed a timely notice of 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 is docketed but is dismissed as untimely.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge