



INTERIOR BOARD OF INDIAN APPEALS

Russell B. Wilkins v. Rocky Mountain Regional Director, Bureau of Indian Affairs

39 IBIA 21 (03/18/2003)



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

RUSSELL B. WILKINS, Appellant	:	Order Docketing and Dismissing Appeal
v.	:	
ROCKY MOUNTAIN REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	Docket No. IBIA 03-68-A March 18, 2003

Appellant Russell B. Wilkins, appearing *pro se*, seeks review of a January 17, 2003, decision issued by the Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director), declining to grant Appellant a fee patent to Allotment No. 3348-A on the Fort Peck Indian Reservation in Montana. Appellant's notice of appeal was forwarded to the Board of Indian Appeals (Board) by the Regional Director, with whom it was filed. For the reason discussed below, the Board docketed this appeal but dismisses it as untimely.

The Regional Director's January 17, 2003, decision correctly and clearly informed Appellant that any appeal had to be filed with the Board, and included the Board's address. The Regional Director also stated that Appellant could request assistance from the Regional Office in preparing his appeal. It was Appellant's responsibility to file his notice of appeal with the Board in accordance with the Regional Director's instructions.

However, Appellant did not file his notice of appeal with the Board and did not request assistance in filing his notice of appeal. Nor did he send the Board a copy of the notice of appeal he filed with the Regional Director. The Board first became aware of the appeal when it received the documents forwarded to it by the Regional Director.

The Board has consistently held that a notice of appeal is not timely when the appellant has been given correct appeal information but files a 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 regulations. See, e.g., *Ducheneaux v. Great Plains Regional Director*, 38 IBIA 237 (2002) and cases cited there.

It appears here that the Regional Director might have forwarded the misfiled notice of appeal to the Board earlier. See 25 C.F.R. § 2.13(b). However, it also appears that, even if the notice of appeal had been forwarded to the Board the day it was received in the Regional Office, it would still have been untimely by the time it reached the Board. More importantly, an appellant who ignores explicit appeal instructions and files his notice of appeal in the wrong office must bear the risk of delays in transmitting his notice of appeal to the Board. See, e.g., Ducheneaux, supra; Reeves v. Anadarko Area Director, 25 IBIA 40 (1993), and cases cited there.

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 Regional Director's January 17, 2003, decision is docketed but dismissed as untimely. 1/

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Kathleen R. Supernaw
Acting Administrative Judge

1/ The Board notes that the Regional Director's decision stated that Appellant had 30 days from the date his notice of appeal was filed in which to file a statement of reasons. This is a requirement contained in BIA's appeal regulations in 25 C.F.R. Part 2. It is not required by the Board's appeal regulations in 43 C.F.R. Part 4, Subpart D.